

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Daniel Dewitt Hall, Circuit Court Judge

Case No. 2017-CP-40-06172
Appellate Case No. 2019-001047

Michael Edmonds, ... Respondent,

v.

City of Columbia, ... Appellant.

RECORD ON APPEAL

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SC Court of Appeals

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS
) THE FIFTH JUDICIAL CIRCUIT
) CASE NO.: 2017-CP-40-6172

Michael Edmonds,

Plaintiff,

vs.

City of Columbia,

Defendant.

Verdict Form

FILED
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HEANETTE W. MCERIDE
C.C.P. & G.S.

1. Did the Defendant, City of Columbia, defame the Plaintiff, Michael Edmonds?

____ Yes. If yes, answer question 1(a), then proceed to question 2.

☒ No. Do not answer question 1(a), proceed to question 2.

1(a). As a result of the defamation, Michael Edmonds sustained damages, if any, in the following amount:

\$ _____

2. Was the Defendant, City of Columbia, negligent with respect to Michael Edmond's separation of employment?

☒ Yes. If yes, proceed to question 3.

____ No. If no, sign below and deliberate no further.

3. Did the City of Columbia's negligence cause Michael Edmond's harm?

☒ Yes. If yes, proceed to question 3(a).

____ No. If no, sign below and deliberate no further.

3(a) As a result of harm to Michael Edmond's, he sustained damages, if any, in the following amount:

\$ 65,000.00

February 22, 2019
Columbia, South Carolina

Signature of Foreperson

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2017 - CP - 40 - 6172

Michael Edmonds

City of Columbia

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: J. Paul Porter, Esquire (#100723)
Cromer Babb Porter & Hicks, LLC
P.O. Box 11675
Columbia, SC 29211

Attorney for : ☒ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

The Court has reviewed the Defendant's Motion for Judgment Notwithstanding the Verdict or in the Alternative for a New Trial. That motion has been fully briefed and the Court has made its determination on the briefs. The Court has determined that the record and law, applied to the standard of review, do not warrant Judgment Notwithstanding the Verdict or a New Trial. Therefore, Defendant's Motion is DENIED.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

J. Paul Porter

Dana Thye

Emma Bennett-Williams

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.



Richland Common Pleas

Case Caption: Michael Edmonds vs City Of Columbia

Case Number: 2017CP4006172

Type: Master/Order/Form 4

So Ordered

s/Daniel D. Hall 2753

Electronically signed on 2019-05-30 10:24:32 page 3 of 3

ELECTRONICALLY FILED - 2019 May 30 2:43 PM - RICHLAND - COMMON PLEAS - CASE#2017CP4006172

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
IN THE FIFTH CIRCUIT
CASE NO. 2016-CP-40-

Michael Edmonds,

Plaintiff,

v.

City of Columbia,

Defendant.

COMPLAINT
(Jury Trial Demanded)

NOT RECORDED
FILED
2017 OCT 11 PM 3:13
CLERK OF COURT
SOUTH CAROLINA

EMPLOYMENT CASE

The Plaintiff complaining of the Defendant respectfully alleges as follows.

PARTIES AND JURISDICTION

1. The Plaintiff Michael Edmonds is a citizen and resident of Kershaw County, South Carolina.
2. The Defendant City of Columbia is municipal subdivision of the State of South Carolina located within Richland County, South Carolina.
3. Plaintiff was employed by the Defendant City within its Fire Department for thirty years preceding this action.
4. The events giving rise to this action occurred in Richland County, South Carolina.
5. This action alleges defamation, public policy discharge, negligence, negligent misrepresentation, and promissory estoppel.
6. The parties have sufficient connections to Richland County, and jurisdiction is proper.

FACTUAL ALLEGATIONS

7. Plaintiff was most recently employed as an Assistant Chief of Administration by the Defendant within its Fire Department.

8. Plaintiff was hired on July 13, 1987 by the Defendant as a Firefighter.

9. Plaintiff worked for the Defendant as a Firefighter from 1987 until approximately 1990 when he was promoted to the rank Round Driver.

10. Plaintiff was next promoted to Engineer in or around 1994, Capitan in or around 1997, Battalion Chief in 2005, and Shift Commander in 2007.

11. Plaintiff was promoted to Assistant Chief of Administration in 2010 by Fire Chief Aubrey Jenkins.

12. Plaintiff as Assistant Chief of Administration was primarily responsible for logistics oversight and product specification throughout the Defendant's Fire Department.

13. Plaintiff received no significant disciplinary actions in his tenure.

14. Plaintiff did not receive regular performance evaluations, but his most recent performance evaluations indicate that he consistently met, if not exceeded, the legitimate performance expectations of his various jobs.

15. Plaintiff was consistently, throughout the years preceding his separation of employment, assured by his supervisor the Fire Chief that he was performing his job aptly.

16. Plaintiff was, at all times relevant hereto, qualified for his jobs within the Defendant.

17. Plaintiff furthered his education while employed by the Defendant including first a Bachelor's Degree of Occupational Safety and Health concentrated in Fire Science obtained from Columbia Southern University in 2014, and a Master's Degree in Public Administration concentrating in Emergency Services Management from the same institution in 2015.

18. Plaintiff also holds high level certifications including a Fire Service Chief Executive Officer Certification from Texas A&M University, he has been credentialed as a Chief Fire Officer by the Center for Public Safety Excellence, and he is a graduate of the South Carolina State Firefighters Association Leadership Institute.

19. Plaintiff, in his role as an executive team member within the Defendant's Fire Department, was consistently candid about what he perceived as issues within the Fire Department and the Defendant City, as a whole, throughout his tenure.

20. Particularly, Plaintiff raised concerns from 2013-2015, both verbally and in writing, about increased overtime usage, and selectively extending light duty to employees in violation of the Defendant City's light duty policy.

21. Plaintiff encountered some pushback as a result of his candor and outspokenness such that he would be denied routine leave for continuing education and would be excluded from executive team meetings he should have been allowed to attend.

22. Liz Stewart and Associates, a consulting firm with a prior relationship to the Defendant City, was hired to analyze the Defendant City's Fire Department as a result of concerns that had been formally and informally raised to City Manager and City Council.

23. Defendant's City Manager announced the analysis to Fire Department employees via email dated May 22, 2016 as follows:

As part of a process to create an honest and respectful workplace, an assessment of the Fire Department will be conducted in the next several weeks. I have discussed this process with Chief Jenkins. He is very supportive and will ensure the participation of all Fire employees.

Your input is vital. You will be invited to provide candid feedback during a short and **confidential** meeting and or survey with our consultant. This will provide you an opportunity to share any concerns and recommendations for improvements needed.

Once the meetings are completed, the results will be compiled and the responses will be reported **anonymously**. The information gathered

will help us determine the best possible ways to support an improved workplace.

When you receive scheduling information, please respond promptly – your input is needed, valued, and will remain confidential.

24. Plaintiff, in reliance on the above, believed he was expected to give open and honest input if contacted by the consulting firm, and that his responses would be maintained as confidential.

25. Plaintiff, based on this belief, promptly responded when contacted by the consulting firm to set up a meeting.

26. Plaintiff and Liz Stewart met on May 24, 2016 regarding issues within the Fire Department.

27. Plaintiff was open and honest during their meeting about several issues he perceived in good faith such as: a lack of accountability amongst officers, indecision amongst executive team members, and excessive overtime use.

28. Liz Stewart interviewed another Assistant Chief George Adams (Fire Marshall) after Plaintiff on May 24, 2016. Stewart, upon information and belief, informed Adams that Plaintiff had a lot to say during their meeting and that he shared a great deal of information.

29. Chief Adams was a close personal friend of Chief Jenkins, and Plaintiff feared reprisal when he learned that confidentiality had not been maintained.

30. Plaintiff emailed Defendant's City Manager on the evening of May 24, 2016 about his concerns.

31. Defendant's City Manager did not meet with Plaintiff in response to his email, but did respond that who would "do all [she could] to maintain the integrity and confidentiality of the protocol . . . established."

32. Plaintiff was next called into a meeting with Defendant Departments Division Head for Public Safety, Allison Baker on June 2, 2016 ostensibly to discuss the findings of the consulting group.

33. When Plaintiff arrived at the meeting he was specifically confronted about the concerns he raised to Stewart on May 24, 2016.

34. Plaintiff was forthright and honest in responding to Baker's inquiries and provided him all information and documentation that he requested.

35. Plaintiff was called to meet with Fire Chief Jenkins on July 5, 2016. There, during a one-on-one meeting, Chief Jenkins lashed out at Plaintiff for minor matters, accused him of trying to push him out and of telling others that he [Plaintiff] was going to be the next Fire Chief and then specifically questioned Plaintiff about the information he shared with Mr. Baker.

36. Chief Jenkins made the following statements to Plaintiff in that meeting:

- a) "Why would you send an email titled 'confidential' to my supervisor," (he then presented Chief Edmonds' 6-2-16 email to Allison Baker);
- b) "You made some big accusations in that letter;"
- c) "Be quiet, this is my meeting";
- d) "Do you know how powerful of a man I am in this town?"

37. Plaintiff following the July 2016 meeting was routinely left out of command staff meetings and otherwise isolated within the Defendant City's Fire Department.

38. The isolation throughout the later part of 2016 and the first half of 2017.

39. A local media outlet ran a story that alleged Plaintiff was involved with the unethical procurement of untested gloves, among a number of other allegations about problems within the Defendant City's Fire Department, the allegations concerning Plaintiff and the gloves were unequivocally false.

40. Plaintiff was also accused in that media story of culpability with respect to mold at several fire stations. Plaintiff was not over facilities at all, facilities were under the supervision of support services a division entirely outside of the Defendant City's Fire Department's custody and control.

41. The allegations led to an internal investigation of Plaintiff, and Plaintiff learned that upon the conclusion of that investigation he was cleared of all wrongdoing.

42. Plaintiff, during the pendency of the investigation, would frequently remind Fire Chief Jenkins that he was trying his best, and Chief Jenkins would respond telling Plaintiff he was "doing it:" indicating that Chief Jenkins was aware that Plaintiff was performing all of his job functions and meeting if not, exceeding, the expectations of his employment despite the undue scrutiny he was undergoing.

43. Plaintiff was brought into a meeting with the Defendant City's Fire Chief on July 5, 2017 wherein he was forced to resign or be terminated. Plaintiff was told that the final straw with respect to the cessation of his employment was the "glove issue:" even though, Plaintiff was told he was cleared of wrongdoing with respect to the glove issue, and Plaintiff, as a matter of fact, had not engaged in wrongdoing or ethical improprieties with respect to the same.

44. Plaintiff was also told that, had the Chief listened to what people were telling him, he would have fired Plaintiff a year ago, ostensibly referring to Plaintiff's candor during the consulting study.

45. Plaintiff's forced resignation in the midst of undue public scrutiny for alleged improprieties that were false or for inadequacies within the Defendant City's Support Service's Division over which he had no control.

46. Plaintiff, though he has made reasonable efforts, has been unable to secure new employment within the Fire profession.

47. Plaintiff has suffered and will continue to suffer severe monetary, emotional, and reputational harm as a result of the occurrences described in this Complaint.

FOR A FIRST CAUSE OF ACTION
(Defamation)

48. Plaintiff realleges the foregoing where consistent.

49. Plaintiff was the subject of false accusations to unprivileged co-workers and the media at large that he engaged unethical procurement practices and was derelict in his job.

50. Such publications originated with City employees and were made with recklessly without regard to Plaintiff's reputation, knowledge of their falsity, and where falsity could have and would have been revealed upon reasonable inquiry.

51. Such publications were defamatory per se and have caused the Plaintiff special harm including a dramatic lessening of his esteem in his profession.

52. The Defendant ratified the defamatory statements and insinuations discussed here when it terminated Plaintiff on false, pretextual grounds that comprised the subject of many of the defamatory statements about Plaintiff in the midst of undue public scrutiny toward Plaintiff.

53. Plaintiff has suffered damages as a result of the defamation alleged here.

54. Those damages include severe reputational harm, lost goodwill, diminished earning capacity, shock, humiliation, embarrassment, pain and suffering, and emotional distress.

55. Plaintiff is also entitled to pre-judgment interest.

FOR A SECOND CAUSE OF ACTION
(Public Policy Discharge)

56. Plaintiff realleges the foregoing where not inconsistent herewith.

57. Plaintiff justifiably raised concerns about excessive use of overtime, violations of the Defendant's leave policy, accountability amongst officers, and indecisiveness amongst executive team members, where appropriate throughout his career.

58. Such conduct was underlain by clear mandates of public policy in South Carolina relating to public safety, equal employment opportunity, and South Carolina ethics laws.

59. Plaintiff was terminated pretextual as a result of his raising concerns.

60. Such constitutes a wrongful termination in violation of public policy in South Carolina for which the Defendant is liable.

61. Plaintiff has lost wages, benefits, earning capacity and has incurred the costs and fees of prosecuting this action. Plaintiff has also suffered noneconomic damages including pain and suffering, humiliation, emotional distress, stress, and anxiety.

62. Plaintiff also seeks pre judgment interest on all claims.

FOR A THIRD CAUSE OF ACTION
(Negligence)

63. Plaintiff realleges the foregoing where consistent.

64. Defendant owed Plaintiff a duty to conduct a confidential investigation when it hired Liz Stewart and Associates to investigate its Fire Department.

65. This duty was based on the Defendant's ordinary duty to supervise its employees and agents, the representations it made to Plaintiff and others about confidentiality, and the knowledge that harm could foreseeably occur to Plaintiff's reputation if the Defendant did not ensure and maintain confidentiality.

66. The Defendant failed to exercise even the slightest care in response to this duty behaving in a negligent and grossly negligent manner.

67. The Defendant in so doing breached a duty to Plaintiff and directly and proximately caused Plaintiff damages which include lost wages, benefits, earning capacity, and the costs and fees of prosecuting this action. The Defendant also caused noneconomic damages to Plaintiff including pain and suffering, humiliation, emotional distress, stress, and anxiety.

68. Plaintiff is also entitled to pre-judgment interest.

FOR A FOURTH CAUSE OF ACTION
(Negligent Misrepresentation)

69. Plaintiff realleges the foregoing where not inconsistent herewith.

70. The Defendant negligently misrepresented to the Plaintiff that its consulting study of its Fire Department would be maintained as confidential.

71. Plaintiff foreseeably relied on such representations in being open and forthright in response to inquiries.

72. Plaintiff's reliance was to his detriment.

73. Such conduct by the Defendant amounts to unlawful negligent misrepresentation.

74. Plaintiff has suffered damages resulting from the same including lost wages, benefits, earning capacity, and the costs and fees of prosecuting this action. The Defendant also caused noneconomic damages to Plaintiff including pain and suffering, humiliation, emotional distress, stress, and anxiety.

75. Plaintiff is also entitled to pre-judgment interest.

FOR A FIFTH CAUSE OF ACTION
(Promissory Estoppel)

76. Plaintiff realleges the foregoing where not inconsistent herewith.

77. Defendant made unambiguous oral and written representations via authorized personnel, including its City Manager and her deputies, that strict confidentiality would be maintained with respect to its Liz Stewart and Associates' audit of the Fire Department.

78. Plaintiff relied, and the Defendant intended Plaintiff to rely, on those representations.

79. Plaintiff's reliance was to his detriment constituting actionable promissory estoppel.

80. Plaintiff has suffered damages as a result of the promissory estoppel herein to include lost wages, benefits, earning capacity, and the costs and fees of prosecuting this action. The Defendant also caused noneconomic damages to Plaintiff including pain and suffering, humiliation, emotional distress, stress, and anxiety.

81. Plaintiff is also entitled to pre-judgment interest.

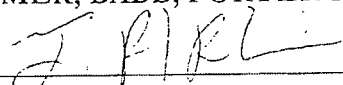
PRAYER OF RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendant City for actual and other damages as alleged herein upon each of his claims in an amount to be determined reasonable by a jury or the Court where appropriate as well as an award for costs and attorney's fees against the Defendant where applicable and any such other relief as the Court in law or equity may deem just and proper. Plaintiff also prays for pre-judgment interest on all damages as recoverable.

(Signature on Next Page)

Respectfully Submitted,

CROMER, BABB, PORTER & HICKS, LLC.

BY: 

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Attorneys for Plaintiff

October 10, 2017

Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	Civil Action No.: 2017-CP-40-6172
Michael Edmonds,	)	
	)	
Plaintiff,	)	
	)	
	)	MOTION FOR SUMMARY
vs.	)	JUDGMENT BY THE CITY OF
	)	COLUMBIA
	)	
City of Columbia,	)	
	)	
Defendant.	)	

TO: PAUL PORTER, ESQUIRE, ATTORNEY FOR ABOVE-NAMED PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that the Defendant, City of Columbia, by and through its undersigned attorney, will move before the Presiding Judge of the Fifth Judicial Circuit at the Richland County Judicial Center in Columbia, South Carolina on the 10th day after service hereof, or as soon thereafter as counsel may be heard for an Order Granting Summary Judgment to the Defendant City of Columbia pursuant to Rule 56 of the South Carolina Rules of Civil Procedure.

The Defendant's Motion for Summary Judgment shall be based upon the following grounds, to wit:

1. The Defendant is immune from suit in this matter pursuant to the provisions of the S.C. Tort Claims Act, specifically sections 15-78-60 (3), 15-78-60 (4) , 15-78-60 (5) , 15-78-60 (14), and 15-78-60 (20) of the South Carolina Code of Laws, 1976, as amended.

2. The Defendant is entitled to Summary Judgment as a matter of law because there is no evidence in the record to establish the essential elements of any of the Plaintiff's five causes of action, namely defamation, public policy discharge, negligence, negligent misrepresentation and promissory estoppel.
3. There is no evidence in the record to establish the essential elements of defamation. The record is void of evidence of publication by the defendant, publication with actual or implied malice, falsity, nor evidence of recipients who interpreted the message as a defamatory statement regarding the plaintiff.
4. There is no evidence in the record to establish the essential elements of public policy discharge because there is no evidence of a violation of a clear mandate of public policy; Plaintiff was not terminated from employment; and there is no evidence that Plaintiff was subjected to intolerable working conditions.
5. There is no evidence in the record to establish the essential elements of negligence. The record is void of any evidence of a cognizable duty, negligent act or omission on the part of the City.
6. There is no evidence in the record to establish the essential elements of negligent misrepresentation because there is no evidence that the City knowingly made a false representation of a material fact.
7. Plaintiff cannot establish the basis of relief against the City for promissory estoppel because he was on notice of at-will employment, he could not reasonably rely upon any "promise" of continuing employment; he resigned from employment, thereby waiving any right to post-termination compensation or

benefits; and he accepted consideration for resignation including payment of accrued leave.

The Defendant shall rely upon the pleading in this case, Rule 56 of the South Carolina Rules of Civil Procedure, affidavits, deposition testimony, applicable statutes and case law.

s/Emma Bennett-Williams

Emma Bennett-Williams, S.C. Bar No. 77884

Dana M. Thye, S.C. Bar No. 16602

W. Michael Hemlepp, Jr., S.C. Bar No. 64264

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November 19, 2018
Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Michael Edmonds,

Plaintiff,

vs.

City of Columbia,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

C/A No.: 2017-CA-40-6172

**MEMORANDUM IN SUPPORT
OF DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

Plaintiff Michael Edmonds is a former employee of the City of Columbia ("City"). The City terminated his employment on May 18, 2017 after the Columbia Police Department concluded a criminal investigation that indicated the Plaintiff knowingly tampered with property of a coworker with intent to harm. Plaintiff filed a Complaint against the City on October 11, 2017 alleging defamation, public policy discharge, negligence, negligent misrepresentation, and promissory estoppel.

STANDARD OF REVIEW

Summary judgment is appropriate when "the pleadings, deposition, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." See Rule 56(b), SCRP. "The purpose of the summary judgment is to expedite the disposition of cases which do not require the services of a fact finder." George v. Fabri, 345 S.C. 440, 452, 548 S.E.2nd 868, 874 (2001). In determining whether a genuine issue of fact exists, the evidence and all reasonable inferences drawn from it must be viewed in the light most favorable to the nonmoving party.

BACKGROUND

Edmonds was employed as an Assistant Fire Chief in the City of Columbia's Fire Department. Edmonds served the Fire Department for twenty-five years prior to his retirement. Chief Aubrey Jenkins rehired Edmonds in 2013. (Ex. 1 Request to Hire Memo). In his latest role, Edmonds served the department as Assistant Chief of Operations. In that role, Edmonds assisted in managing the department's budget; helped with the design and specifications and purchasing of fire apparatus and equipment; and acted as a liaison with general services and maintenance of the fire stations. (Ex. 2. Edmonds' Deposition p. 11:9-16) The position assisted the Fire Chief in planning, organizing and directing the administrative functions of the Fire Department and its programs. (Ex.3 Assistant Fire Chief (Administration) Position Announcement)

On or around March 2016, Edmonds participated in an assessment conducted by Liz Stewart Consulting. (Ex. 2 Edmonds' Deposition p. 23:16-23) The members of the Fire Department received an email from Ms. Teresa Wilson, City Attorney, informing the staff that the survey was taking place (Ex. 2 Edmonds Deposition 24:22-24) Edmonds raised concerns with Ms. Stewart during his interview (Ex. 2 Edmonds Deposition pp.24:25-25:1-3) However, Edmonds shared the same concerns regarding the department with several other City officials prior to his interview with Liz Stewart. These other officials include his direct supervisor, Harry Tinsley, Chief Aubrey Jenkins, and Pamela Benjamin, Director of Human Resources. (Ex. 2 Edmonds' Deposition p.25:10-25)

Approximately one year after the Liz Stewart survey, Edmonds was the subject of an investigation into "...why Asst. Chief Edmonds made a large and substantial purchase for gloves that were not part of a long trial before being performed. There were also concerns raised as to the relationship between Edmonds and the vendor..." (Ex.4 Internal Affairs Report Excerpt)

Edmonds was aware that he was the subject of the investigation. (Ex. 2 Edmonds' Deposition p.40:8-11). Over a year after the Liz Stewart survey, an article was published in a local blog. The article was titled *Whistleblower: Mass Resignations, Crumbling Facilities, Fraudulent Reporting Tarnish Fire Department*. (Ex. 5 Blog) The article mentions a chief who purchased sixty-thousand dollars' worth of firefighting gloves which were not part of a trial before being purchased. The article includes a photograph of Chief Jenkins. The article does not mention Edmonds by name nor does it mention Edmonds by title. Id.

LEGAL ARGUMENT

I. The City is entitled to summary judgment on the defamation claim because the main element of the tort of defamation – a false statement- cannot be established.

Edmonds claims that the Defendant released a false statement regarding his participation in unethical procurement practices and that he was derelict in his job. He alleges that these false statements were released to the media and printed in an online blog. The Defendant urges this Court to grant summary judgment in its favor on Plaintiff's defamation claim on the ground that the alleged defamatory statement was true. Thus, precludes the Plaintiff from establishing an essential element of the defamation cause of action.

In order to establish a cause of action for defamation in South Carolina, a plaintiff must show: (1) a false and defamatory statement; (2) that the unprivileged statement was published to a third party; (3) the publisher was at fault; and (4) the statement was actionable irrespective of harm or the publication caused special harm. Fleming v. Rose,

350 S.C. 488,494, 567 S.E.2d 857, 860 (2002). Should a plaintiff fail to prove any one of the elements, the defamation claim fails. See, Williams v. Lancaster County Sch. Dist., 369 S.C. 293, 304, 631 S.E.2d. 286, 292-93 (Ct. App. 2006).

As stated above, the first element in a defamation cause of action is a false and defamatory statement. An action for defamation cannot be based on a true statement. Anderson v. Stanco Sports Library, Inc., 542 F.2d 638, 641 (4th Cir.1976); Restatement (Second) of Torts § 581A (1977) Truth is an absolute defense in a defamation cause of action. Parker v. Evening Post Pub. Co., 317 S.C. 236, 245, 452 S.E.2d 640, 645. The defendant has the burden of proving truth as a defense in a defamation action. Id. The defendant who asserts truth as a defense must prove that the statement is true not that the person quoted actually made the statement. Erickson v. Jones Street Publishers, LLC., 368 S.C. 444, 458, 629 S.E.2d 653, 661. Insinuations are actionable when the insinuation is false and malicious and its meaning is plain. Eubanks v. Smith, 292 S.C. 57, 354 S.E.2d 898, 901 (1987).

Edmonds claims he was defamed by a publication on a blog which stated:

It's one thing when an individual makes a potentially unethical decision, such as a chief with purchasing authority allegedly buying some \$60,000 worth of new firefighting gloves that were not part of a rigorous internal test of six different brands to choose the ones best suited for the department. That situation, sources tell Quorum, is subject of an open internal investigation. (Ex.5 Blog)

However, deposition testimony support the fact that the statement written in the blog was true. A chief with purchasing authority actually was under investigation for purchasing sixty-thousand dollars' worth of firefighting gloves. Even if the chief did not commit the

acts that the blog accuses him of committing, the truth is the investigation actually took place.

In Cooper v. Lab. Corp. of Am. Holdings, Inc., 150 F.3d 376 (4th 1998), the laboratory submitted lab results to the plaintiff's employer indicating that the plaintiff tested positive for alcohol. However, the plaintiff was using medication that skewed the results of the lab test giving a false positive for alcohol use. Id. at 381. The plaintiff filed action against the laboratory for defamation. The Fourth Circuit held that regardless of the fact that it was medication and not alcohol that resulted in the positive results, the results were nonetheless "true". Id.

As in Cooper, the alleged defamatory statement in the case at bar is true. Edmonds, who was not identified in the blog, was investigated for his purchase of sixty-thousand dollars' worth of firefighter gloves. Because an action for defamation cannot be based on a statement that is true, the City of Columbia is entitled to summary judgment on the defamation cause of action.

Additionally, there is no evidence that a city official published the alleged defamatory statement. Plaintiff does not allege that a city official published the statement. Rather, he declares that the city should have found out who published the statement. (Ex. 2 Edmonds' Deposition pp.48:23-25, 49:1-4). The plaintiff cannot succeed in a defamation cause of action merely because unflattering rumors have reached the public's attention. See Williams v. Lancaster Cty. Sch. Dist., 369 S.C. 293, 631 S.E.2d 286 at 34 (2006).

II. The City is entitled to summary judgment on public policy discharge because Plaintiff alleges a general allegation of violation of public policy and has not referenced a specific public policy for which the City allegedly violated.

Absent a contract to the contrary, an at-will employee may be terminated for any reason or no reason at all. Ludwick v. This Minute of Carolina, Inc., 287 S.C. 219, 337 S.E.2d 213 (1985). One exception to the at-will employment principle are cases where the termination of an employee violates a clear mandate of public policy. Id. A public policy discharge cause of action is a tort action. Culler v. Blue Ridge Electric Cooperative, Inc., 309 S.C. 243, 422 S.E.2d 91 (1992). This cause of action was created to protect employees where no other remedy exists. Barron v. Labor Finders of S.C. 609, 713 S.E.2d 634 (S.C. 2011), see also Stiles v. American General Life Ins. Co., 994 F. Supp. 712 (D.S.C. 1998).

In order to prove public policy discharge, a Plaintiff must prove: (1) termination of the plaintiff; (2) a clear mandate of public policy; (3) the termination was in retaliation for actions protected by that public policy. Further, the Plaintiff must allege more than a general statement that the discharge violated public policy. McNeil v. S.C. Dept. of Corr., 404 S.C. 186, 743 S.E.2d 843 (Ct. App. 2013). The allegations must set forth specific information to enable the court to determine what public policy was violated. Id.

Here, the Plaintiff alleges he was forced to resign in retaliation for raising concerns about excessive use of overtime, being short staffed and stagnation in the hiring process. (Ex. 2 Edmonds Deposition p.26:4-25) Plaintiff also raised concerns about lack of discipline, indecisiveness of senior staff and mistreatment of recruits Edmond's further alleges the Defendant's conduct violated public policy (Ex. 2 Edmonds' Deposition p.27:21-25). The public policy allegations in this case are simply general statements that do not set forth the specific public policy that was

violated. The defendant cannot point to a violation of a clear mandate of public policy and therefore, cannot show that he was terminated in retaliation for actions protected by that public policy. Edmonds must allege a violation of a clear mandate of public policy in order to succeed on his public policy claims. McNeil Plaintiff has failed to allege a clear mandate of public policy.

For these reasons, Edmonds cannot obtain relief under public policy discharge and the City is entitled to summary judgment.

III. The City is entitled to summary judgment on the negligence cause of action because there is no affirmative duty to act

To recover in a negligence action, a plaintiff must show: (1) a duty of care owed by the defendant to the plaintiff; (2) a breach of that duty by a negligent act or omission; (3) damages proximately resulting from breach of duty. See Shipes v. Piggly Wiggly St. Andrews, Inc., 269 S.C. 479, 238 S.E.2d 167 (1977); Gause v. Doe, 317 S.C. 39, 451 S.E.2d 408 (Ct. App. 1994); Daniel v. Days Inn of America, Inc., 292 S.C. 291, 356 S.E.2d 129 (Ct. App. 1987). "An affirmative duty exists only if created by statute, contract, relationship, status, property interest, or some other special circumstance." Carson v. Adgar, 326 S.C. 212, 486 S.E.2d 3 (1997); Burns v. South Carolina Commission for the Blind, 323 S.C. 77, 448 S.E.2d 589 (Ct. App. 1994); Rayfield v. South Carolina Dept. of Corrections, 297 S.C. 95, 374 S.E.2d 910 (Ct. App. 1988). Negligence cannot be presumed from injury because the state of South Carolina does not recognize *res ipsa loquitur*. Fletcher v. Med. Univ., 390 S.C. 458, 702 S.E.2d 372 (Ct. App. 2010) (that complication occurred in course of medical treatment is not itself evidence of negligence).

"An independent contractor...contracts to do a piece of work according to his own methods, without being subject to the control of his employer except as to the result of his

work.” Cherry v. Myers Timber Co., Inc., 404 S.C. 596, 601 , 745 S.E.2d 405, 407, citing Creighton v. Coligny Plaza Ltd. P’ship, 334 S.C. 96, 116, 512 S.E.2d 510, 520 (Ct. App. 1998)

Generally, employers are not vicariously liable for the acts of an independent contractor. Rock Hill Telephone Co. Inc. v. Globe Communications, Inc., 363 S.C. 385, 611 S.E.2d 235 (2005).

The non-delegable duties of an employer are to provide a reasonably safe work place and suitable tools for its employees. Simmons v. Tuomey Regional Medical Ctr., 330 S.C. 115, 498 SE2d 408 (Ct. App. 2000), see also Jenkins v. Richmond & D. R. Co, 39 S.C. 507, 18 S.E. 182, Nuckolls v. Great Atl. & Pac. Tea Co, 192 S.C. 156, 5 S.E.2d 862 (1939)

The Plaintiff has not identified a cognizable duty that the City failed to perform. Liz Stewart and Associates was an independent contractor hired by the city to conduct an assessment of the Fire Department. Plaintiff alleges the Ms. Stewart shared confidential information from his interview with her. This alleged breach does not pertain to the employer’s duty to provide a safe work place and to provide suitable tools for its employees. Therefore, the Plaintiff appears to allege a breach by a third party other than the City. As such, the City is entitled to summary judgment on the negligence cause of action.

IV. The City is entitled to summary judgment on the negligent misrepresentation claim because the Plaintiff was not induced to act by a misrepresentation of a present or pre-existing fact.

Negligent misrepresentation causes of action are predicated upon negligently false statements that induce the plaintiff to enter into a contract or business transaction and suffers a loss based on his reliance upon the misrepresentation. Gruber v. Santee Frozen Foods, Inc. 309 S.C. 13, 419 S.E.2d 795 (Ct. App. 1992), See also, Evans v. Rite Aid Corp., 324 S.C. 269, 478 S.E. 2d 846,

848 (1996), Gilliland v. Elmwood Properties, 301 S.C. 295, 391 S.E.2d 577 (1990); Armstrong v. Collins, 366 S.C. 204, 621 S.E.2d 368 (Ct. App. 2005). To prove negligent misrepresentation, a plaintiff must prove: (1) a false representation made by the defendant to the plaintiff; (2) a pecuniary interest by the defendant in making the statement; (3) a duty of care owed by the defendant to see that truthful information was communicated to the plaintiff; (4) the defendant breached the duty by failing to exercise due care; (5) the plaintiff relied on the representation; and (6) the plaintiff suffered a pecuniary loss as a direct and proximate result of reliance on the representation. Hurst v. Sandy, 329 S.C. 471, 494 S.E.2d 847, 852 (Ct. App. 1997); See also, Rickborn v. Liberty Life Ins. Co., 321 S.C. 291, 468 S.E.2d 292, 298 (1996). In order to fulfill the first element of a negligent misrepresentation action, the representation must not only be false when it is made, the misrepresentation must also relate to a present or pre-existing fact. Fields v. Melrose Ltd. P'ship, 312 S.C. 102, 105, 439 S.E.2d 283, 285 (Ct. App. 1993), see also Gilliland v. Elmwood Properties, 301 S.C. 295, 391 S.E.2d 577 (1990); Winburn v. Insurance Co. of North America, 287 S.C. 435, 339 S.E.2d 142 (Ct.App.1985).

Edmonds alleges the Defendant made false representations when the City Manager sent an email informing members of the Fire Department that "...an assessment of the Fire Department would be conducted in the next several weeks..." by a consultant. (Ex. 6 Wilson email) The email from Ms. Wilson informed participants that there would be confidentiality in the assessment process. The email alerted the Plaintiff that responses would be shared anonymously. Plaintiff participated in the process and alleges the assessor released the details of his discussion with her. However, based on the law, the representation in question cannot be based on unfulfilled promises or future events. The representation must relate to a present or pre-existing fact. Fields. The City Manager's statement referred to a future event. As such, since the event was not in existence when

it was made; the Plaintiff is unable to fulfill the elements of negligent misrepresentation because he cannot show that there was a false representation of an event that was either pre-existing or present at the time the representation was made.

Further, the Plaintiff has shown that he did not rely on the alleged misrepresentation. The concerns that the Plaintiff alleges he presented during the April 2016 assessment with the Ms. Stewart are the same concerns he states he presented to others before and after the assessment. Therefore, the Plaintiff cannot show that he would not have voiced his concerns absent reliance on the alleged representation. The Plaintiff acted prior to any representation made by the City Manager.

Because the Plaintiff did not make his comments in reliance of an alleged false representation and because the subject of the representation involved a future event, the City is entitled to summary judgment on the negligent misrepresentation cause of action.

V. The City is entitled to summary judgment on promissory estoppel because Edmonds' resignation bars any claim for equitable relief arising from her loss of employment.

In order to have a successful cause of action for promissory estoppel, the Plaintiff must prove: (1) a promise unambiguous in its terms; (2) reasonable reliance on the promise by the party to whom it is made; (3) the reliance is expected and foreseeable by the party who made the promise; and (4) injury in reliance on the promise. N. Am. Rescue Prods., Inc. v. Richardson, 769 S.E. 2d 237, 241 (S.C. 2015) (citing Davis v. Greenwood Sch. Dist. 50, 620 S.E. 2d 65, 68 (S.C. 2005)). A promissory estoppel claim is equitable in nature. Rushing v. McKinney, 370 S.C. 280, 289, 633 S.E. 2d 917, 922 (Ct.App.2006). "In equity the parties are not entitled, as a matter of right, to a trial by jury." Wachovia Bank, Nat. Ass'n v. Blackburn, 407 S.C. 321, 328, 755 S.E.2d

437, 441 (2014), (quoting Williford v. Downs, 265 S.C. 319, 321, 218 S.E.2d 242, 243 (1975)).

Therefore, Promissory estoppel should only apply in situations where a refusal to enforce a promise “would be virtually to sanction fraud or would result in other injustice.” Richardson, at 241 (citing Satcher v. Satcher, 570 S.E. 2d 535, 538 (S.C. Ct. App 2002)).

Edmonds alleges that the City Manager, Ms. Teresa Wilson, promised strict confidentiality with respect to a workforce assessment conducted by an outside contractor; that he reasonably relied on that promise; that the City knew he would reasonably rely on that promise and that he was constructively discharged as a result of his reliance on Wilson’s promise. As mentions previously, Edmonds voiced his concerns with other members of the City prior to the Liz Stewart survey. Therefore, he did not rely on statements made by the City Manager.

Additionally, Edmonds’s employment with the City of Columbia was at-will. At-will employment may be terminated at any time for any reason or no reason. Styles v. Am. Gen. Life Ins. Co. 335 S.C. 222, 516 S.E.2d 449, 450 (1999). Edmonds exercised his right to terminate his at-will employment when he resigned his City of Columbia employment. Edmond’s voluntary resignation bars him from bringing a promissory estoppel cause of action because his alleged damages are the natural consequence of resigning employment. Further, our Supreme Court ruled that a promissory estoppel claim was barred because the parties enters into a “termination agreement” that dissolved the parties’ existing financial obligations and precluded any promissory estoppel claim that arose prior to the termination agreement. Richardson, at 380. Here, Edmond’s resigned employment and received a payout of his unused leave hours in exchange. Therefore, as in Richardson, Edmonds accepted benefits in exchange for his resignation and is thus precluded from claiming equitable estoppel.

CONCLUSION

For the reasons set forth herein, the City is entitled to an order granting summary judgment on all cause of action.

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February 11, 2019
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Michael Edmonds,

Plaintiff,

v.

City of Columbia,

Defendants.

IN THE COURT OF COMMON PLEAS
IN THE FIFTH CIRCUIT
CASE NO. 2017-CP-40-06172**MEMORANDUM IN OPPOSITION TO
MOTION FOR SUMMARY JUDGMENT**

Plaintiff opposes the Defendant's motion for summary judgment and requests that this matter proceed to trial in full. This motion is set to be heard by the Honorable Judge Doyet A. Early, III on February 12, 2019 at 2:00 PM. This matter is set for a day certain trial beginning the following week.

1. Introduction

This is an employment case. Plaintiff is a former Assistant Chief of the Defendant City's Fire Department. He worked there from July 13, 1987 to July 7, 2017 when he was forced to resign. Plaintiff's complaint alleges that the Defendant began freezing him out and then targeted him for termination after he was candid in response to a purportedly confidential department-wide leadership survey about internal problems at the City's Fire Department. Plaintiff's complaint also alleges that the Defendant defamed him by act when it demanded his resignation shortly following a widely circulated news article that falsely accused him of unethical procurement practices, insurance fraud, and professional unfitness to such a degree that it was insinuated to have resulted in a citizen's death.

Plaintiff filed this action on October 11, 2017. He alleges defamation, wrongful discharge, negligence, negligent misrepresentation, and promissory estoppel. The latter four claims relate to his forced resignation and the Department-Wide leadership survey, while the former claim (defamation)

relates to the circumstances surrounding Defendant's decision to force Plaintiff to resign. Defendant filed a global motion for summary judgment on November 19, 2018.

2. Facts

Plaintiff was hired by the Defendant as a Firefighter on July 13, 1987. (Ex. 1: Hire Form). Plaintiff was promoted to Fire Equipment Operator by October 1990, Fire Captain by November 1997, Battalion Chief on November 8, 2004, and Shift Commander on August 2, 2007. (Ex. 2: Personnel Documents Evidencing Promotions). His promotion to Shift Commander was the result of his success during a panel interview process conducted by then Deputy Chief Aubrey Jenkins, Assistant Chief Harry Tinsley, and a third member from the public. (Ex. 3: 8/8/07 Memo). That title was later reclassified as Division Chief. (Ex. 4: 2/13/08 Evaluation Excerpt). Plaintiff was promoted to Acting Assistant Fire Chief by then Interim Fire Chief Aubrey Jenkins on February 24, 2010 and then Assistant Fire Chief of Administration by Fire Chief Aubrey Jenkins on October 31, 2011. (Ex. 5: Assistant Chief Promotion).

Plaintiff, as Assistant Fire Chief of Administration, was responsible for overseeing the administrative functions of the Fire Department, overseeing its purchasing, and assisting in emergency response. (Ex. 6: Assistant Chief of Administration Posting). Plaintiff retired from that position on November 23, 2012 due to then-emerging changes in the South Carolina Retirement System; however, he reapplied for his position in 2013 and was rehired, after a competitive process, as a working retiree. (Ex. 7: 11-8-12 Retirement Email); (Ex. 8: 1-10-13 Hire Letter). Initially, Plaintiff, while an Assistant Chief, reported to a Deputy Fire Chief Harry Tinsley. That position was later eliminated and Plaintiff was directly reporting to Fire Chief Aubrey Jenkins when he left employment. (Ex. 9: Allison Baker Dep. p. 11:16-20). Fire Chief Jenkins testified that Plaintiff performed his job well at his job and met the Defendant's legitimate employment expectations:

Q. Okay. Have you had occasion over the years, I would assume, to observe his work product?

A. Yes.

Q. Is he good at his job?

A. I thought he was good.

Q. Okay. Did he meet the expectations of his job?

A. Yes.

(Ex. 10: Aubrey Jenkins Dep. p. 6: 11-17).

Issues with waste, inconsistent application of policy, and inefficiency arose at the Fire Department in Plaintiff's later term of employment which he promptly and appropriately documented within his chain of command. Plaintiff emailed his supervisors, Fire Chief Jenkins and Deputy Chief Tinsley, on March 14, 2015 about severe understaffing at the Fire Department coupled with the Department's failure to set up a timely recruit school. (Ex. 11: 3/14/15 Edmonds Email). This dynamic resulted in overwork and excessive overtime for short-staffed firefighters. (*Id.* at p. 2 of 2). Next on July 13, 2015, Plaintiff documented, up his chain of command, that a Fire Captain had been allowed to exceed the City's restricted duty policy by over 120 days. (Ex. 12: 7/13/15 Edmonds Email). Plaintiff saw little in the way of an affirmative response to his reports but was thereafter denied routine personal time to pursue training in Fire Department Leadership. (Ex. 13: 9/10/15 Edmonds Email). Chief Jenkins expressed frustration in response to Plaintiff's questioning his denial of personal time on September 10, 2015 writing:

Why am I being questioned in an email with my subordinates being copied? I am quite aware of how we operate. I believe it would have been best served to discuss this with me!

(*Id.* at p. 1 of 3). Plaintiff promptly explained his email, apologized for the perceived slight, and over the coming months tried to make amends to no avail. (*Id.* at p. 1 of 3), (*see also*, Ex. 14: 3/10/16 Edmonds Email).

City Manager Teresa Wilson, via an email to all Fire Department Employees, announced that a third-party consultant would be conducting a department-wide assessment to "create an honest and respectful workplace." (Ex. 15: 3/22/16 Wilson Email). The reason for the assessment, according to

City Manager Wilson, was “a series of incidents: wherein firefighters exhibited “bad judgment” and “a growing concern on [her] part about [] getting the house in order.” (Ex. 16: Wilson Dep. pp. 10: 16-11:5). Generally, the incidents that instigated the assessment involved an incident of misconduct involving drinking and young woman at a fire station, allegations of hazing, and concerns about the overall command staff at the Department. (*Id.* at pp. 11:22-14:2). City Manager Wilson’s email, as relevant, stated:

You will be invited to provide candid feedback during a short and confidential meeting and or survey with our consultant. []

Once the meetings are completed, the results will be compiled and reported anonymously.

(Ex. 15: 3/22/16 Wilson Email).

The Defendant’s Handbook reasonably authorized Ms. Wilson, as City Manager, to make contractual promises on behalf of the City. (Ex. 17: Handbook Disclaimer) (“Only the City Manager has the authority to enter into contracts of employment and any such contracts must be in writing and signed by the city manager.”). City Manager Wilson testified that she intended for Fire Department Employees to rely on her statements about confidentiality and anonymity in the email so that they would feel comfortable to candidly expressing their concerns about the Department. (Ex. 16: Wilson Dep. pp. 15:3-16:1). Indeed, City Manager Wilson specifically conceded that reliance on her email by city employees was reasonable:

Q. You said that they could feel comfortable in sharing with Liz. Was it reasonable for an employee to read this e-mail and think that what they said to Liz was going to be maintained as confidential?

A. That was the intent. Yes. I wanted them to feel that it would be confidential.

(*Id.* at p. 15:17-22).

Plaintiff was interviewed by the third-party consultant Liz Stewart on March 24, 2016. (Ex. 18: 3/25/16 Wilson Email). Plaintiff revealed the concerns he had previously raised internally in that

meeting. (*Id.* at p. 1 of 2). The day of his interview, a fellow Assistant Chief George Adams was interviewed after Plaintiff. (*Id.* at p. 2 of 2). In a meeting that afternoon, Assistant Chief Adams, who was close to Chief Jenkins, told the Plaintiff that the consultant had told him that Plaintiff “had a lot to say . . . [and] it was good information, but a lot of it.” (*Id.*) Plaintiff, because of his interaction with Adams, reasonably felt that confidentiality had been compromised and sent a report of the above to City Manager Wilson. (*Id.*) City Manager Wilson, reaffirming her pledge of confidentiality, responded:

I truly value your insight, perspective and willingness to be open with your concerns during this process. I take it very seriously and will do all I can to maintain the integrity and confidentiality of the protocol we have established. I look forward to talking with you soon. Try not to worry. Easter blessings to you and your family.

(*Id.* at p. 1 of 2).

Assistant City Manager Baker testified that, after completing her report, the third-party consultant met with him, City Manager Wilson, human resources, and (at times) Chief Jenkins to discuss her findings and the interviews. (Ex. 9: Baker Dep. pp. 23:16-25:5). Next, Plaintiff was called to meet with Assistant City Manager Baker on June 2, 2016 where he discussed the concerns he had previously raised internally and to the third-party consultant. (Ex. 19: 6-2-16 Edmonds Email). Plaintiff, at Baker’s request, sent him the emails attached to this motion as Exhibits 11-14 as documentation of the concerns he expressed during their meeting. (*Id.*)

Plaintiff alleges, that approximately one month after his meeting with Baker, he was called into a meeting on July 5, 2016 with Chief Jenkins where he was confronted for expressing his concerns to Jenkins’ superior. (Compl. ¶ 35). At that meeting, Plaintiff alleges that Jenkins accused him of trying to push him out, so he could become the next Fire Chief and that Jenkins made the following statements:

- “Why would you send an email titled ‘confidential’ to my supervisor?” (Referencing Exhibit 19)
- “You made some big accusations in that letter.”

- “Be quiet, this is my meeting”:
- “Do you know how powerful of a man I am in this town?”

(Compl. ¶¶ 35-36). Baker testified that, at that meeting, “he questioned why” Plaintiff “was going to [his] boss on [him] for some action that [he] didn’t take.” (Ex. 10: Jenkins Dep. p. 15:5-14). Jenkins admitted to questioning Plaintiff about sending the email to Baker and stating “Be quiet, this is my meeting” but he denied stating “Do you know how powerful of a man I am in this town.” (*Id.* at P. 15:5-17:24). Plaintiff alleges that he was isolated in his role following that meeting. (Compl. ¶¶ 37-38).

Chief Jenkins, to the contrary, testified that he had no malice against Plaintiff for his report to Baker. (Ex. 10: Jenkins Dep. p. 39:6-25). However, Assistant City Manager Baker testified that during this period, Chief Jenkins attempted to have Plaintiff removed from his post. (Ex. 9: Baker Dep. p. 43:7-17). Baker testified that he opposed Plaintiff being removed “primarily based on the information that [Plaintiff] has shared with [Baker] [that] nobody could refute.” (*Id.* at pp. 40:10-42:21 *generally*, 41:1-13 *specifically*).

Less than a year later, following the period where Plaintiff alleges he was isolated, an article was published by a local reporter on June 19, 2017 in part focusing on Plaintiff. (Ex. 20: Article). That article was titled: “Whistleblower: Mass Resignations, Crumbling Facilities, Fraudulent Reporting Tarnish Fire Department”. (*Id.*) The latter facilities concern directly related to Plaintiff as Assistant Chief of Administration. The article was later updated with increased focus on Plaintiff alleging that he had engaged in improper procurement practices regarding the purchase of gloves from a company run by a person the article described as his “camping buddy.” (Ex. 21: Updated Article p. 3-4 of 6). The articles even went so far as to accuse perceived failings by Plaintiff with respect to facilities as having contributed to a citizen’s death. (*Id.*).

Fire Chief Jenkins asked Plaintiff to resign on July 5, 2017. (Ex. 10: Jenkins Dep. pp. 6:23-7:7). Chief Jenkins testified that he asked Plaintiff to resign based on the facilities and glove issues reported.

(*Id.* at pp. 7:21-8:9). With respect to the facilities issues, Jenkins later admitted that Plaintiff did not have the authority to abate the issues himself, but rather he could only ask the City's Facilities Department to address the issues, and that he, Jenkins, had no evidence that Plaintiff did not continue to petition the Facilities Department. (*Id.* at pp. 42:12-43:16). Further, an internal investigation cleared Plaintiff of any wrongdoing with respect to the glove issue. (Ex. 22: Investigative Report). That is, Jenkins' own testimony and his Department's own report indicate that the grounds Jenkins used to request Plaintiff's resignation were pretextual.

Plaintiff first asked to be transferred or demoted instead of forced to resign from his position. (Ex. 23: Jenkins Email 7/7/17). Chief Jenkins testified that Plaintiff's offer to be transferred or demoted was unacceptable because his Department, which Plaintiff had made reported to be woefully understaffed, "had nothing available". (Ex. 10: Jenkins Dep. p. 44:9-24). Plaintiff resigned, at Chief Jenkins' request, on July 7, 2017. (Ex. 24: 7/7/17 Edmonds Email). Jenkins testified that he did not know whether Plaintiff would have been terminated if he had not resigned. (Ex. 10: Jenkins Dep. p. 6:20-22). However, a document produced by Defendant demonstrates that Chief Jenkins had prepared a termination letter for Plaintiff had Plaintiff refused the pressure to resign. (Ex. 25: 7/7/17 Knox Email).

3. Standard of Review

Pursuant to Rule 56(c), SCRCP, summary judgment is only proper when there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. *Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). Under Rule 56(c), SCRCP, the party seeking summary judgment has the burden of demonstrating the absence of a genuine issue of material fact. *Baughman*, 306 S.C. at 102, 410 S.E.2d at 539. In determining whether any triable issues of fact exist, the evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the non-moving party. *Summer v. Carpenter*, 328 S.C. 36, 42, 492 S.E.2d 55, 56 (1997); *City*

of *Columbia v. American Civil Liberties Union*, 323 S.C. 384, 386, 475 S.E.2d 747, 748 (1996); *Lattie v. SHS Enterprise Inc.*, 300 S.C. 417, 418, 389 S.E.2d 300, 301 (Ct. App. 1990) (summary judgment standard of review is to liberally construe the record in favor of the nonmoving party and give the nonmoving party the benefit of all favorable inferences that might reasonably be drawn therefrom). At summary judgment, it is only necessary that the nonmoving party submit a scintilla of evidence warranting determination by a jury for summary judgment to be denied. *Hill v. York County Sheriff's Department*, 313 S.C. 303, 308, 437 S.E.2d 179, 182 (Ct. App. 1993), cert. denied (1994).

When a motion for summary judgment is made with supporting affidavits or other evidence, an adverse party cannot rest upon mere allegations, but must use affidavits and other documents to "set specific forth facts showing there is a genuine issue for trial." Rule 56(e), SCRCPP. Defendant filed its motion without supporting affidavits or other evidence such that Plaintiff could merely rest on his pleadings at argument. *See, Id.* Nevertheless, Plaintiff has produced the above evidentiary documentation and proffered the below legal argument to show that there are genuine and material issues for trial.

4. Argument

The below argument is written without the benefit of supportive memorandum by the Defendant because at the time this memorandum was drafted, no supportive memorandum by the Defendant had been filed. Thus, Plaintiff can only respond to the 7 broad grounds for summary judgment raised by the Defendant, absent context, in its motion and does so briefly below. Should the Defendant elaborate on its arguments, Plaintiff may, time permitting, file supplemental memoranda.

4.1. The Defendant is not entitled to Tort Claims Act Immunity.

Without explaining why, Defendant first claims it is immune from suit based on five exceptions to the South Carolina Tort Claims Act's general waiver of immunity. Def Mot. p. 1; *citing*, S.C. Code Ann. § 15-78-60(3-5, 14, 20). Those exceptions concern (1) (Subsection 3) implementation

of court orders, (2) (Subsection 4) adoption of ordinances, (3) (Subseciton 5) discretionary immunity, (4) (Subsection 14) claims covered by the Worker's Compensation, Unemployment Compensation, or State Employee Grievance Law, and (5) (Subsection 20) third-party action. Section 15-78-60 Subsections-3, 4, 14 and 20 are facially inapplicable to the facts of this case and the Defendant has not satisfied its legal burden to affirmatively establish discretionary immunity.

The South Carolina Tort Claims Act (SCTCA) waives the state and its political subdivisions' tort immunity. S.C. Code Ann. § 15-78-10 *et. seq.* The SCTCA provides: "[t]he State, an agency, a political subdivision, and a governmental entity are liable for their torts in the same manner and to the same extent as a private individual under like circumstances, subject to the limitations upon liability and damages, and exemptions from liability and damages, contained [in the SCTCA.]" S.C. Code Ann. § 15-78-40. "The burden of establishing a limitation upon liability or an exception to the waiver of immunity under the Tort Claims Act is upon the governmental entity asserting it as an affirmative defense." *Steinke v. S. Carolina Dep't of Labor, Licensing & Regulation*, 336 S.C. 373, 393, 520 S.E.2d 142, 152 (1999); *citing, Strange v. South Carolina Dep't of Highways and Pub. Transp.*, 314 S.C. 427, 445 S.E.2d 439 (1994).

"To establish discretionary immunity, the governmental entity must prove that the governmental employees, faced with alternatives, actually weighed competing considerations and made a conscious choice." *Stephens v. CSX Transp., Inc.*, 415 S.C. 182, 200, 781 S.E.2d 534, 543-44 (2015); *quoting, Pike v. S.C. Dep't of Transp.*, 343 S.C. 224, 230, 540 S.E.2d 87, 90 (2000). "Furthermore, the governmental entity must show that in weighing the competing considerations and alternatives, it utilized accepted professional standards appropriate to resolve the issue before them." *Id.* "Mere room for discretion on the part of the entity is not sufficient to invoke the discretionary immunity provision." "The governmental entity bears the burden of establishing discretionary immunity as an affirmative defense." *Sabb v. S.C. State Univ.*, 350 S.C. 416, 428, 567 S.E.2d 231, 237 (2002). Defendant

proffered no evidence in support of its Motion; thus, it is unclear how it could establish an affirmative defense at all. Nevertheless, the evidence submitted by Plaintiff flatly rejects the notion that the Defendant exercised discretion to an extent that it should be protected by discretionary immunity. Because of this and because the other immunity provisions cited by the Defendant are wholly irrelevant to this case, Defendant is not immune from suit under the Tort Claims Act.

4.2. Plaintiff has established each of his claim's elements.

Next Defendant suggests, in a conclusory fashion, that Plaintiff has not established the elements of his claims. Plaintiff rebuts Defendant's broad statement with a brief assessment of each of his claims below.

4.2.1. Defamation

Defamation requires: (1) a false and defamatory statement was made; (2) the unprivileged publication was made to a third party; (3) the publisher was at fault; and (4) actionability of the statement or existence of special harm. *McBride v. School Dist. Of Greenville County*, 389 S.C. 546, 559-560 (Ct. App. 2010). Defamation need not be accomplished in a direct manner. *Eubanks v. Smith*, 292 S.C. 57, 354 S.E.2d 898 (1987); *Tyler v. Macks Stores*, 275 S.C. 456, 272 S.E.2d 633 (1980). In fact, A mere insinuation is actionable as a positive assertion if it is false and malicious and its meaning is plain. *Id.* That is, defamation does not require speech and can occur in South Carolina based on an act and insinuation. *Tyler*, 275 S.C. 456, 458, 272 S.E.2d 633, 634 (1980).

"A communication is defamatory if it tends to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him." *Murray v. Holnam, Inc.*, 344 S.C. 129, 139 (2001). A communication is also defamatory if it tends "to impeach the honesty, integrity, virtue, or reputation, or publish the natural or alleged defects, of one who is alive, and thereby expose him to public hatred, contempt, ridicule, or obloquy, or to cause him

to be shunned or avoided, or to injure him in his office, business, or occupation.” *Smith v. Bradstreet*, 63 S.C. 525, 41 S.E. 763 (1902) (emphasis added). Furthermore:

When [a defamatory] statement is classified as actionable per se, the defendant is presumed to have acted with common law malice, and the plaintiff is presumed to have suffered general damages. Id. When the statement is not actionable per se, the plaintiff must plead and prove both common law malice and special damages.

McBride, 389 S.C. at 560, 698 S.E.2d at 852 (citing *Erickson v. Jones St. Publs., LLC*, 368 S.C. 444, 465, 629 S.E.2d 653, 664 (2006)). A defamatory insinuation is per se actionable where the defamation accuses a plaintiff of: “(1) commission of a crime of moral turpitude; (2) contraction of a loathsome disease; (3) adultery; (4) unchastity; or (5) unfitness in one’s business or profession.” *Holtzschneider v. Thomson Newspapers, Inc.*, 332 S.C. 502, 511, 506 S.E.2d 497, 502 (1998); *Capps v. Watts*, 271 S.C. 276, 246 S.E.2d 606 (1978).

Here, Plaintiff’s defamation claim arises from the intersection between *Tyler v. Macks Stores* recognition of defamation by act and the Court’s repeated acknowledgements that statements that impugn a person’s professional fitness are *per se* defamatory. Therefore, here where the evidence suggests Plaintiff was pretextually forced to resign following the publication of a news article that accused him of grave professional unfitness, Plaintiff has established the elements of a triable defamation by act claim.

4.2.2. Wrongful Discharge

A discharge violates public policy in South Carolina where an employee is either (1) required to violate the law, (2) terminated in a way that violates the law or (3) is terminated in violation of a clear mandate of public policy. “Under the “public policy exception” to the at-will employment doctrine [] an at-will employee has a cause of action in tort for wrongful termination where there is a retaliatory termination of the at-will employee in violation of a clear mandate of public policy. *Barron v. Labor Finders of S.C.*, 393 S.C. 609, 614, 713 S.E.2d 634, 636–37 (2011); citing, *Ludwick v. This Minute*

of *Carolina, Inc.*, 287 S.C. 219, 337 S.E.2d 213 (1985). Plaintiff alleged and submitted evidence that he was terminated because he made reports to City Administration and a third-party consultant about understaffing, overpaying overtime, violation of city policies, and uneven application of those policies amongst employees. Plaintiff's claim is premised on clear mandates of public policy as discussed in § 4.4. below. As such, he has established a triable wrongful discharge claim. Notably, that Plaintiff was forced to resign is of no consequence to his wrongful discharge claim as South Carolina recognizes the actionability of a constructive discharge and the Court has held that whether an employee was constructively discharged involves issues of fact for the jury. *Tracey v. Sconnix Broad. of S.C., Inc.*, 284 S.C. 379, 382, 325 S.E.2d 542, 544 (1985); *Graves v. Horry-Georgetown Tech. Coll.*, 391 S.C. 1, 9, 704 S.E.2d 350, 355 (Ct. App. 2010) ("In the absence of a tangible employment action, an employee is entitled to relief for a constructive discharge if her "employer deliberately makes the working conditions intolerable in an effort to induce the employee to quit.").

4.2.3. Negligence

Negligence requires: (1) a duty of care owed by the defendant to the plaintiff, (2) a breach of that duty by the defendant, (3) that the breach was the proximate and cause in fact of the plaintiff's injury, and (4) damages caused by the breach. *Steinke v. South Carolina Dep't of Labor, Licensing and Regulation*, 336 S.C. 373, 520 S.E.2d 142 (1999). Generally, negligence is a factually controlled concept whose determination best rests with the jury. *Faile v. South Carolina Dep't of Juvenile Justice*, 350 S.C. 315, 566 S.E.2d 536 (2002). Negligent supervision cases "generally turn on two fundamental elements – knowledge of the employer and foreseeability of harm to third parties." *Doe v. ATC, Inc.*, 367 S.C. 199, 206, 624 S.E.2d 447, 450 (Ct. App. 2004).

"[A]n affirmative legal duty may be created by statute, a contractual relationship, status, property interest, or some other special circumstance." *Madison ex rel. Bryant v. Babcock Ctr., Inc.*, 371 S.C. 123, 136, 638 S.E.2d 650, 656–57 (2006); *Carson v. Adger* 326 S.C. 212, 217, 486 S.E.2d 3, 5 (1996).

“The standard of care in a given case may be established and defined by the common law, statutes, administrative regulations, industry standards, or a defendant’s own policies and guidelines.” *Madison ex rel. Bryant*, 638 S.E.2d at 659. A person’s reputation and loss of earning capacity is a legally protected property interest. *See, Eubanks v. Smith* 292 S.C. 57, 60 354 S.E.2d 898, 900 (1987) (recognizing good name of a terminated employee as a property interest). When a defendant undertakes an action, the results of which may foreseeably damage another’s protected property interest in their reputation, such as an investigation by a public entity, that defendant has a duty to act with due care and to only use reliable information. *See, South Carolina State Ports Authority v. Booz-Allen & Hamilton Co.*, 289 S.C. 373, 376-377, 346 S.E. 2d 324, 326 (1986) (“[Defendant] owed a duty to the S.C. State Ports Authority to exercise due care to accurately report objective factual data concerning the Charleston port, if it knew or should have known the report was intended to be used by [Georgia Ports Authority] as a marketing device”). A Plaintiff in South Carolina can establish a negligence claim, in the employment setting, based on traditional common law theories of negligence and gross negligence. *See, Loges v. Mack Trucks, Inc.*, 308 S.C. 134, 137, 417 S.E.2d 538, 540 (1992) (“Thus, to the extent appellant alleges Mack Trucks’ negligence was the proximate cause of injury arising from the slanderous conduct of Grove, her claim is not barred by the Act.”).

Here, Plaintiff, as discussed in more detail with respect to duty in § 4.5 below, has established the basic elements of a triable negligence claim. Specifically, Plaintiff establishes negligence by evidence that the Defendant promised confidentiality with respect to its department-wide leadership survey and then reviewed the results of that survey in a manner that did not protect confidentiality and ultimately led to retribution against the Plaintiff.

4.2.4. Negligent Misrepresentation

Negligent misrepresentation requires:

1. A false representation made by the defendant to the plaintiff;
2. A pecuniary interest by the defendant in making the statement;

3. A duty of care owed by the defendant to see that truthful information was communicated to the plaintiff;
4. The defendant breached the duty by failing to exercise due care;
5. The plaintiff justifiably relied on the representation; and
6. The plaintiff suffered a pecuniary loss as a direct and proximate result of the reliance on the representation.

Hurst v. Sandy, 329 S.C. 471, 494 S.E.2d 847, 852 (Ct. App. 1997). Here, Plaintiff's evidence that the Defendant portrayed its Department-Wide Survey as a confidential process to Plaintiff and then carried out its process in a manner that demonstrated little to no care for confidentiality sufficiently indicates a triable negligent misrepresentation claim.

4.2.5. Promissory Estoppel

Promissory estoppel arises where the refusal to enforce a promise "would be virtually to sanction fraud or would result in other injustice." *Higgins Construction Co. Inc. v. Southern Bell Telephone & Telegraph Co.*, 276 S.C. 663, 281 S.E.2d 469, 470 (1981). Promissory estoppel requires: (1) a promise unambiguous in its terms, (2) reasonable reliance on the promise by the plaintiff, (3) the reliance is expected and foreseeable by the party who made the promise, and (4) injury in reliance on the promise. *Powers Construction Co., Inc. v. Salem Carpets, Inc.*, 283 S.C. 302, 322 S.E.2d 698 (Ct. App. 1984). The Court of Appeals has held that at-will public employees can properly assert a promissory estoppel claim based on verbal representations made to them by their employer. *Bishop v. City of Columbia*, 401 S.C. 651, 668, 738 S.E.2d 255, 263 (Ct. App. 2013) (certiorari denied). Here, the evidence supports: that City Manager Wilson was authorized to make a promise of confidentiality with respect to the Department-Wide survey at issue, that the City is bound by that promise, and that the City broke that promise resulting in injury to the Plaintiff. As such, Plaintiff has proffered a triable promissory estoppel claim.

4.3. Plaintiff, with respect to defamation, has established malice, falsity, and publication.

Defendant specifically, albeit without legal analysis or cited precedential support, targets the elements of malice; falsity and publication. As an introductory matter, Plaintiff sufficiently pled his defamation claim, and the Defendant did not submit supportive material for its motion such that Plaintiff can rely merely on his allegations and the Defendant's motion must be denied. See, Rule 56, SCRCP. Regardless, Plaintiff's claim still survives because he has submitted sufficient evidence of the elements targeted.

Plaintiff's defamation claim involves *per se* defamation, regarding his professional competency, and therefore malice is presumed. *McBride v. Sch. Dist. of Greenville Cty.*, 389 S.C. 546, 560, 698 S.E.2d 845, 852 (Ct. App. 2010) ("When the statement is classified as actionable *per se*, the defendant is presumed to have acted with common law malice, and the plaintiff is presumed to have suffered general damages."). Even absent presumed malice, Plaintiff could establish malice on these facts. Defendant has not suggested that Plaintiff is required to prove constitutional malice; regardless, Plaintiff can establish either malice standard here—common law or constitutional. Constitutional malice requires that "the defendant acted with constitutional actual malice, that is, with knowledge that the statement was false or with reckless disregard of its falsity." *Sanders v. Prince*, 304 S.C. 236, 239, 403 S.E.2d 640, 643 (1991). On the other hand, with respect to common law actual malice, if "the communication complained of goes beyond what the occasion demands [to be published] and is unnecessarily defamatory of the plaintiff," it is not protected. *Murray v. Holnam, Inc.*, 344 S.C. 129, 141 (Ct. App. 2001). Within these cases, "actual malice requires that at the time of the defendant's act or omission he was conscious or chargeable with consciousness of his wrongdoing." *Id.* at 144. Whether malice exists is for the jury to decide. *Id.* In finding actual malice, "the court must draw all [] inferences in [the Plaintiff's] favor." *Church of Scientology Intern. v. Daniels*, 992 F.2d 1329, 1332 (4th Cir. 1993). Here, the evidence supports malice in so much as the Defendant forced Plaintiff to resign on knowingly false grounds.

Moreover, that publications occurred within the Fire Department is not dispositive since internal publications, absent a need to know basis, are actionable. *McBride v. Sch. Dist. of Greenville Cty.*, 389 S.C. 546, 562, 698 S.E.2d 845, 853 (Ct. App. 2010) (“However, in South Carolina, an employee’s statement to another employee is a “publication” when the privilege of the employees’ common interest is abused.”). Here, Plaintiff has established a triable *Tyler v. Macks Stores* type defamation by act claim for his pretextual forced resignation amid media attention that publically accused him of gross misconduct. *Tyler v. Macks Stores of S.C., Inc.*, 275 S.C. 456, 458, 272 S.E.2d 633, 634 (1980) (“It is established that a defamatory insinuation may be made by actions or conduct as well as by word.”) (Denying a demurrer where an employee was terminated after being forced to take a polygraph test which gave his co-workers: “the feeling and belief that he had been discharged for some wrongful activity.”).

4.4. Plaintiff has established that he was constructively discharged in violation of a clear mandate of public policy.

Ironically, Defendant initially suggests that Plaintiff has not established a constructive discharge. This premise is directly dislodged by emails attached as an exhibit to this memorandum that involve top administration at the Defendant discussing the termination letter Plaintiff would be given if he did not resign.

Moving on from that inapplicable introductory argument, Plaintiff has otherwise stated a legally actionable wrongful discharge claim. “In this state, an at-will employee has a cause of action for wrongful termination where there is a retaliatory termination of the at-will employee in violation of a clear mandate of public policy.” *Barron*, 393 S.C., 616-17. The court looks to the General Assembly for public policy on which to base an exception to the doctrine of at-will employment, and the determination of whether such a public policy exists is a question of law for the court. *Donevant v. Town of Surfside Beach*, 414 S.C. 396, 414-15, 778 S.E.2d 320, 330 (Ct. App. 2015). Here, Plaintiff pled and presented evidence that he was terminated because he raised internal concerns about understaffing

in the Fire Department, overuse of overtime by the Fire Department, and uneven application of policy amongst Fire Department employees. South Carolina Code Sections 4-19-10 *et. seq.*, 4-21-10 *et. seq.*, and 5-25-10 each discuss the powers and responsibilities of municipal and county fire departments (including hybrid county/municipal fire departments such as the department at issue). Plaintiff made reports about practices and occurrences that undermined the mission of the Defendant's Fire Department. As such, Plaintiff sufficiently states a claim for wrongful discharge in violation of public policy.

4.5. Plaintiff proffers sufficient evidence of a duty owed and negligence by Defendant.

Defendant next generally suggests that Plaintiff has not established negligence and specifically claims that it owed Plaintiff no duty. Plaintiff has established an actionable negligence claim based on the Defendant's failure to maintain his internal reports as confidential after it promised employees, including the Plaintiff, that their responses to its department-wide survey would be protected as confidential and anonymous. Where an act is voluntarily undertaken [] the actor assumes the duty to use due care." *Johnson v. Robert E. Lee Acad., Inc.*, 401 S.C. 500, 504, 737 S.E.2d 512, 514 (Ct. App. 2012); *Hendricks v. Clemson Univ.*, 353 S.C. 449, 456-57, 578 S.E.2d 711, 714 (2003) (citing *Russell v. City of Columbia*, 305 S.C. 86, 89, 406 S.E.2d 338, 339 (1991)). "The recognition of a voluntarily assumed duty in South Carolina jurisprudence is rooted in the Restatement of Torts, which states:"

One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if

- (a) his failure to exercise such care increases the risk of such harm, or
- (b) the harm is suffered because of the other's reliance upon the undertaking.

Johnson v. Robert E. Lee Acad., Inc., 401 S.C. 500, 504–05, 737 S.E.2d 512, 514 (Ct. App. 2012); *quoting*, Restatement (Second) of Torts § 323. Here, in addition to the discussion of duties arising for negligent supervision and due to the propensity of foreseeable harm to Plaintiff's future earning capacity and reputation at § 4.2.3. above, Defendant owed an enforceable duty to Plaintiff when it gratuitously promised to maintain Plaintiff's reports to its third-party consultant. Plaintiff, based on the foregoing analysis and the facts discussed in § 2 of this brief, has established an actionable negligence claim.

4.6. Plaintiff proffers sufficient evidence of a knowing misrepresentation by Defendant.

Defendant, with respect to negligent misrepresentation, appears to make a fact-based assertion that Plaintiff has not established a knowing misrepresentation. To the contrary, the evidence suggests that the Defendant, through its City Manager, made two representations that confidentiality would be maintained during its department-wide survey. The evidence also suggests that Defendant failed to exercise even slight care to maintain that promise through the process of its department-wide survey. Therefore, Plaintiff has established, at least circumstantially, a triable negligent misrepresentation claim.

4.7. Plaintiff has established an actionable promissory estoppel claim.

Defendant last argues that Plaintiff cannot establish promissory estoppel because he was an at-will employee and because he resigned. Defendant's suggestion that Plaintiff voluntarily resigned is plainly rebutted by communications affixed to this memorandum such that this latter argument is a nonstarter. The former argument regarding at will employment is facially rebutted by a fairly recent appellate court decision involving the Defendant as a party. Faced with a nearly identical argument by the Defendant in a separate case, the Court of Appeals ruled in 2013 that at-will employees could maintain an actionable promissory estoppel claim based on authorized representations by its officials. *Bishop v. City of Columbia*, 401 S.C. 651, 665, 738 S.E.2d 255, 262 (Ct. App. 2013) ("Retirees argue summary judgment on estoppel was inappropriate because there is a genuine issue of fact as to whether

they reasonable relied on promises and representations made by City employees. We agree.”). Here, Plaintiff has presented satisfactory evidence that he relied to his detriment on the City’s promise of confidentiality with respect to its department-wide survey and the law supports that the Defendant can be bound by that promise.

5. Conclusion

Plaintiff, based on the above facts and law, requests that the Defendant’s motion for summary judgment be denied and that this matter proceed to trial on all claims.

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Attorney for Plaintiff

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	C/A NO.: 2017 -CP-40-6172
	)	
Michael Edmonds,	)	
	)	
Plaintiff,	)	
	)	DEFENDANT'S MOTION FOR JUDGMENT
vs.	)	NOTWITHSTANDING THE VERDICT OR
	)	IN THE ALTERNATIVE
City of Columbia,	)	FOR A NEW TRIAL
	)	
Defendant.	)	
	)	

YOU WILL PLEASE TAKE NOTICE that the Defendant City of Columbia, by and through its undersigned attorney, will move before the Honorable Daniel D. Hall presiding Judge of the Court of Common Pleas for the Fifth Judicial Circuit at the Richland County Judicial Center located at 1701 Main Street, Columbia, South Carolina, on the tenth (10th) day following the service hereof or as soon thereafter as counsel may be heard, for an Order granting Defendant a Judgment Notwithstanding the Verdict pursuant to Rule 50(b), SCRCPP, or in the alternative, for a New Trial pursuant to Rule 59, SCRCPP.

The above matter was tried before a jury during the week of February 19, 2019, with the Honorable Daniel D. Hall presiding. Emma Bennett-Williams and Dana Thyne appeared as counsel for the Defendant, City of Columbia and Paul Porter appeared as counsel for the Plaintiff, Michael Edmonds. On Friday, February 22, 2019, the jury returned a verdict in favor of the Defendant City on the cause of action for Defamation and on behalf of the Plaintiff on the cause of action for Negligence and awarded \$65,000.00 in damages. The City comes now asking this Court to grant a judgment

notwithstanding the verdict in favor of the City on the Negligence claim or in the alternative grant a new trial on that cause of action based on the following issues listed below.

MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT

1. The Court erred in not directing a verdict on the Negligence claim

a. Negligent Separation of Employment does not exist as a cause of action or is the equivalent of a wrongful discharge claim.

In the Third Cause of Action in Plaintiff's Complaint, he alleged that the City was negligent in its failure to exercise due care in response to its duty to conduct a confidential investigation when it hired Liz Stewart and Associates as well as when it supervised its employees and agents making representations to Plaintiff and others about such confidentiality. Complaint ¶¶. 64-67. Nowhere in Plaintiff's Complaint did he mention any duty with regard to Plaintiff's separation of employment.

Throughout this three-day trial, Plaintiff shifted the framework of his argument from the City's duty to supervise a consultant hired to conduct a survey of the Columbia Fire Department to a duty to supervise its Fire Chief, Aubrey Jenkins. The verdict form submitted to the jury on the Negligence cause of action asked only whether the jury found the City of Columbia negligent as to the Plaintiff's separation of employment. It did not mention confidentiality at all. This followed on the heels of jury charges that outlined the elements of a negligent cause of action in general.

Submitting this cause of action to the jury was tantamount to asking the jury whether the City was negligent in how they separated Plaintiff from employment. That is, imposing a duty upon the City in using due care when it decided to terminate an

employee in clear contradiction to the firm adherence in South Carolina to the principle of at-will employment. To require employers to demonstrate that due care must be used in every termination decision abrogates the long-standing principle that employees may be terminated for any reason or no reason. *See, Ludwick v. This Minute of Carolina, Inc.*, 287 S.C. 219, 337 S.E.2d 213 (1985)(Absent a contract to the contrary, an at-will employee may be terminated for any reason or no reason at all.) An employee's remedy under South Carolina law is limited to an action sounding in wrongful termination, not negligence.

Plaintiff actually availed himself of the cause of action for wrongful discharge in the Second Cause of Action in his Complaint, which alleged that Plaintiff was wrongfully terminated in violation of public policy for raising various work-related concerns. Complaint, ¶¶57-61. The Court directed a verdict in favor of the Defendant City at the close of Plaintiff's case, finding Plaintiff failed to provide evidence of the public policy violated as required by *McNeil v. S.C. Dept. of Corr.*, 404 S.C. 186, 743 S.E.2d 843 (Ct. App. 2013). This was Plaintiff's remedy for a wrongful termination, not a negligence claim which turns the at-will employment doctrine on its head.

b. Negligent Supervision also failed as a matter of law.

If Plaintiff argues that his Third Cause of Action was really in the nature of a Negligent Supervision claim, it also should not have been submitted to the jury.

Under the South Carolina Tort Claims Act ("SCTCA"), the defendant is liable for the negligence of its employees when the employee is acting within the scope of his or her employment. S.C. Code Ann. § 15-78-50. Additionally, the SCTCA also states that governmental entities are not negligent if an employee acts with "intent to harm."

Hamilton v. Charleston County Sheriff's Department, 399 S.C. 252 (2012); Degenhart v. Knights of Columbia, 309 S.C. 114, 116-117, 420 S.E.2d 495, 496 (1992) (quoting Restatement (Second) of Torts § 317 (1965)). The city is not liable for "a loss resulting from responsibility or duty including but not limited to supervision, protection, control, confinement, or custody of any ...prisoner, inmate, or client of any governmental entity, except when the responsibility or duty is exercised in a grossly negligent manner." Hamilton citing S.C. Code Ann. § 15-78-60(25) (2005). Under this premise, governmental entities could in effect "hide" behind the behavior of the employee and allege that it was intentional to absolve itself from liability. This is why a cause of action for negligent supervision was created. Negligent supervision does not allow the governmental entity to escape liability if it knew or should have known that the employee was incompetent, unfit or would create an unreasonable risk of harm to another and failed to properly supervise them. Negligent supervision only attaches when the conduct by the employee is deemed to have been intentional. Id. "A defendant is guilty of gross negligence if he is so indifferent to the consequences of his conduct as not to give slight care to what he is doing." Jackson v. SC. Dep't of Corrs., 301 S.C. 125, 126, 390 S.E.2d 467, 468 (Ct.App.1989). Gross negligence involves an intentional, conscious failure to do something which it is incumbent upon one to do or the intentional doing of a thing one ought not do. Hollins v. Richland Cty. Sch. Dist. One, 310 S.C. 486, 427 S.E.2d 654 (1993); Clyburn v. Sumter Cty. Sch. Dist. 17, 311 S.C. 521, 429 S.E.2d 862 (Ct.App.1993); Grooms v. Marlboro Cty. Sch. Dist., 307 S.C. 310, 414 S.E.2d 802 (Ct.App. 1992). There was no evidence presented or offered as to defendant's employee acting with gross negligence. If the City's employee did not intend to harm the Plaintiff,

negligent supervision does not lie. Instead, the employee's conduct is the basis of the liability. This cause of action should not have been presented to the jury. At a minimum, a special interrogatory should have inquired as to whether or not the jury believed the employee to have acted intentionally.

c. The exclusivity of the Workers' Compensation provision in the South Carolina Tort Claims Act is an absolute immunity to the duty alleged by Plaintiff.

Plaintiff argued at trial that the City was negligent in its termination of Plaintiff.

The tort of negligence falls under the SCTCA which governs all tort actions against a governmental entity. S.C. Code Ann. §15-78-10 et seq.. That Act provides that such entities are immune from suit unless waived by provision of the Act subject to some exceptions that maintain the immunity altogether. S.C. Code Ann. §15-78-20, §15-78-40, and §15-78-60. One of the exceptions to the waiver of immunity found in the Act is "any claim covered by the South Carolina Workers' Compensation Act..." S.C. Code Ann. §15-78-60(14). This provision, when read with S.C. Code Ann. §42-1-540, restores sovereign immunity and vests original and exclusive jurisdiction of Plaintiff's claim with the South Carolina Workers' Compensation Commission. Thus, absolute immunity is still preserved for torts brought against a governmental employer that are covered by the Workers' Compensation Act.

The South Carolina Workers' Compensation Act ("Act") provides for the rights and remedies of employees who sustain work-related injuries and those rights and remedies granted by the Act shall exclude all other rights and remedies of such employee as against his employer. S.C. Code Ann. §42-1-540 (1962). "The exclusivity provision of the Act precludes an employee from maintaining a tort action against an employer

where the employee sustains a work-related injury.” Posey v. Proper Mold & Engineering, 378 S.C. 210, 661 S.E.2d 395 (2008), *citing* Edens v. Bellini, 359 S.C. 433, 597 S.E.2d 863, (Ct.App. 2004). “The exclusive remedy doctrine was enacted to balance the relative ease with which the employee can recover under the Act: the employee gets swift, sure compensation, and the employer receives immunity from tort actions by the employee.” Posey, 378 S.C. at 224; Edens, 359 S.C. at 442.

Plaintiff argued that a remedy under the Workers’ Compensation Act was not available to him because his stress and personal injuries stemmed from normal employer/employee relations involving discipline and discharge and so were exempted from coverage under S.C. Code Ann. §42-1-160(C). However, case law is clear that when the allegations of injury are in the nature of personal injury-type damages, the Act is the exclusive means of settling such claims. Loges v. Mack Trucks, Inc., 308 S.C. 134, 417 S.E.2d 538 (1992); Gardner v. Jones Apparel Group, Inc., C.A. No. 2:07–2783–CWH, 2008 WL 2943205 (D.S.C. July 30, 2008) (finding that employee's emotional distress and negligent supervision claims arising out of her termination related to her pregnancy were subsumed by the Act's exclusive remedy for any work-related physical or emotional injury); Palmer v. House of Blues Myrtle Beach Restaurant Corp., C.A. No. 4:05–cv–3301–RBH, 2006 WL 2708278 (D.S.C. Sept.20, 2006) (noting that “causes of action for intentional infliction of emotional distress (outrage) and negligence constitute personal injuries within the scope of the Act”); Cason v. Duke Energy Corp., 348 S.C. 544, 560 S.E.2d 891 (2002) (finding that employees' claims for employer's negligence resulting in injuries from a catastrophic explosion was included in the exclusive remedy provisions of the Act); Edens v. Bellini, 359 S.C. 433, 597 S.E.2d 863 (Ct.App.2004)

(dismissing personal representative's wrongful death claim arising from a fatal crush injury); Neese v. Michelin Tire Corp., 324 S.C. 465, 478 S.E.2d 91 (Ct.App.1997), overruled on other grounds by Abbott v. Ltd., Inc., 338 S.C. 161, 526 S.E.2d 513 (2000) (dismissing employee's negligence action against manufacturer arising from injury that occurred while he unloaded truck). Hand v. SunTrust Bank, Inc., 6:11-CV-00501-JMC, 2012 WL 3834859, (D.S.C. Sept. 4, 2012).

Plaintiff's damages were clearly submitted to the jury under a personal injury analysis, including pain and suffering, emotional distress, etc., and so were within the scope of the exclusive jurisdiction of the Workers' Compensation Act for which the City was immune under the Tort Claims Act.

For these reasons, the City is entitled to a judgment notwithstanding the verdict in the Plaintiff's negligence claim as this cause of action should not have been submitted to the jury and the City's directed verdict motions should have been granted as a matter of law.

MOTION FOR A NEW TRIAL

2. A new trial should be granted in favor of the City on the negligence cause of action

a. The verdict form was misleading, unduly suggestive and contained an error of law.

The verdict form contained language describing a cause of action not raised in the Complaint. As mentioned above, the cause of action "negligent separation of employment" was described on the verdict form as opposed to negligent supervision as the pleadings indicated. After hearing jury charges concerning general negligence, the jury was presented with a verdict form that asked them whether they thought the City was

negligent in its separation of Plaintiff from employment. For the reasons set forth above, negligent separation of employment is the equivalent of a wrongful discharge claim and that claim had already been decided on a directed verdict motion in the City's favor. This was essentially granting Plaintiff another bite at a wrongful discharge recovery.

The Defendant submitted verdict forms that set forth the proper jury questions in a manner that conformed to both the evidence and the pleadings in this case. (Court's Exhibit #5 & 6). The Court's denial of Defendant's proposed verdict form on negligence was error and the Defendant preserved that objection at the appropriate time. Evidence of the impact of that error of law was that the jury asked for a definition of this concept after approximately an hour of deliberation. During deliberation, the jury provided the Court with a note that asked "what is the definition of negligent separation of employment?" (Court Exhibit #4). The Court's only recourse was to re-charge the elements of negligence as contained in Ralph King Anderson, Jr.'s South Carolina Requests to Charge – Civil. These charges, while correct recitations of the law of negligence, did not contain a definition of negligent separation of employment because such an action does not exist outside of wrongful discharge.

This error suggested to the jury that it was possible to be negligent in the manner an employer chose to terminate an employee. An employee termination is an intentional act, not a negligent one, and should have been provided to the jury in a negligent supervision styled verdict form. The verdict form as provided by the Court was misleading in this regard and suggested an outcome to the jury.

b. Such error was not harmless

An alleged error is “harmless” only if the court determines the alleged error did not contribute to the verdict. It is impossible to believe that, after reviewing the entire record, this Court would find this error did not reasonably affect the result of the trial. The prejudicial effect of a defective verdict form may be cured where the trial court provides clear and cogent jury instructions. See State v. Covert, 368 S.C. 188, 214, 628 S.E.2d 482, 496 (Ct.App.2006); State v. Myers, 344 S.C. 532, 536, 544 S.E.2d 851, 853 (Ct.App.2001). “[A] special verdict question may be so defective in its formulation that its submission results in a prejudicial effect which constitutes reversible error.... The prejudicial effect of a defective verdict form may be cured where the trial court provides clear and cogent jury instructions.” South Carolina Dept. of Transp. v. First Carolina Corp. of S.C., 372 S.C. 295, 303, 641 S.E.2d 903, 908–09 (2007) (citations omitted), Sulton v. HealthSouth Corp., 734 S.E.2d 641, 645 (S.C. 2012). Here, the jury asked the Court to define a phrase contained in the verdict form. A phrase that never appeared in the jury charges and seemed to suggest to the jury that the way Plaintiff separated from employment was done negligently. This was never a claim in Plaintiff’s Complaint and merely became one as the trial progressed. Because this verdict form was misleading, overly suggestive and contained a clear error of law, to submit same to the jury was an abuse of the Court’s discretion and warrants a new trial as to the negligence claim.

WHEREFORE, for the reasons contained herein, Defendant prays for an Order granting Defendant a judgment notwithstanding the verdict, finding in favor of the Defendant on the negligence cause of action in its entirety, or in the alternative, a new trial absolute on the negligence claim.

s/Dana M. Thye

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March 1, 2019

Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Michael Edmonds,
Plaintiff,

v.

City of Columbia,
Defendants.

IN THE COURT OF COMMON PLEAS
IN THE FIFTH CIRCUIT
CASE NO. 2017-CP-40-06172

**MEMORANDUM IN OPPOSITION
TO POST-TRIAL MOTION**

Plaintiff opposes the Defendant's post-trial motion for judgment notwithstanding the verdict or a new trial by way of this memorandum. The Court properly allowed Plaintiff's negligence claim to be decided by the jury, the Court's verdict form was straightforward and does not justify a new trial, and the jury's verdict should be upheld.

1. Introduction

Plaintiff tried claims of defamation and negligence to a jury verdict before the Honorable Daniel DeWitt Hall from February 19, 2019 to February 22, 2019. The jury returned a verdict of "No" on the question of defamation and "Yes" on the questions of general negligence and causation. The jury awarded \$65,000.00 in damages to the Plaintiff.

Defendant now moves for judgment notwithstanding the verdict or a new trial. The dispositive portion of Defendant's motion relies on wholly irrelevant or readily distinguishable caselaw and statutes. Their legal arguments in this regard, to the extent they were raised at trial or via the Defendant's Rule 56 motion, have been properly dispatched by the Court several times. Their new trial motion contends that the Court's verdict form which used plain language to pose the question of negligence within the context of the facts of this case was confusing, misleading, or prejudicial. The Court, to the contrary, properly exercised its discretion in proffering a simple yet comprehensive

verdict form to the jury. Defendant's myriad of arguments, as elaborated upon below, should be rejected.

2. Standard of Review

Defendant files this motion in part under Rule 50(b), SCRCP (JNOV) and in part under Rule 59, SCRCP (Motion for a New Trial).

2.1. Rule 50(b), SCRCP – JNOV

Rule 50(b) provides:

Whenever a motion for a directed verdict made at the close of all the evidence is denied or for any reason is not granted, the court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. A party who has moved for a directed verdict may move to have the verdict and any judgment entered thereon set aside and to have judgment entered in accordance with his motion for a directed verdict; or if a verdict was not returned, such party may move for judgment in accordance with his motion for a directed verdict. A motion for a new trial may be joined with this motion, or a new trial may be prayed for in the alternative. If a verdict was returned the court may allow the judgment to stand or may reopen the judgment and either order a new trial or direct the entry of judgment as if the requested verdict had been directed. If no verdict was returned the court may direct the entry of judgment as if the requested verdict had been directed or may order a new trial.

Rule 50(b), SCRCP. "In ruling on motions for directed verdict and JNOV, the trial court is required to view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the party opposing the motions and to deny the motions where either the evidence yields more than one inference or its inference is in doubt." *Strange v. S.C. Dep't of Highways & Pub. Transp.*, 314 S.C. 427, 429–30, 445 S.E.2d 439, 440 (1994). A JNOV motion "should not be granted where the 'evidence yields more than one inference or its inference is in doubt.'" *Daves v. Cleary*, 355 S.C. 216, 229, 584 S.E.2d 423, 429 (Ct. App. 2003); *quoting, Evans v. Taylor Made Sandwich Co.*, 337 S.C. 95, 99, 522 S.E.2d 350, 352 (Ct.App.1999). "When considering [a JNOV] motion, neither the appellate court nor the circuit court has authority to 'decide credibility issues or to resolve conflicts in the testimony

and evidence.” *Reiland v. Southland Equip. Serv., Inc.*, 330 S.C. 617, 634, 500 S.E.2d 145, 154 (Ct.App.1998); *Daves v. Cleary*, 355 S.C. 216, 229, 584 S.E.2d 423, 430 (Ct. App. 2003).

2.2. Rule 59, SCRPC – Motion for a New Trial

Pursuant to Rule 59(a), SCRPC: “[a] new trial may be granted to all or any of the parties and on all or part of the issues [] in an action in which there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the State.” Rule 59, SCRPC. “The grant or denial of a new trial motion rests within the discretion of the trial judge and will not be disturbed on appeal unless the trial judge’s findings are wholly unsupported by the evidence or the conclusions reached are controlled by error of law.” *Creighton v. Coligny Plaza Ltd. P’ship*, 334 S.C. 96, 113, 512 S.E.2d 510, 519 (Ct. App. 1998). “In deciding whether to assess error to a court’s denial of a motion for a new trial, we must consider the testimony and reasonable inferences to be drawn therefrom in the light most favorable to the non-moving party.” *Id.*

3. Discussion

The jury in this case returned a verdict of \$65,000.00 in response to Plaintiff’s legally actionable and factually supported negligence claim. The Court, in so much as Defendant appropriately raised its JNOV motions on directed verdict, appropriately denied Defendant’s Motions for Directed Verdict and, without more, need not second guess that denial here. Furthermore, the verdict form employed by the Court was concise yet comprehensive and was not defective or in error. Plaintiff addresses each of Defendant’s arguments below, in the order presented by Defendant on brief. Plaintiff, based on the foregoing, asks the Court to deny the Defendant’s post-trial motion.

3.1. The Court appropriately denied Defendant’s directed verdict motions on negligence.

Negligence requires: (1) a duty of care owed by the defendant to the plaintiff, (2) a breach of that duty by the defendant, (3) that the breach was the proximate and cause in fact of the plaintiff’s injury, and (4) damages caused by the breach. *Steinke v. South Carolina Dep’t of Labor, Licensing and*

Regulation, 336 S.C. 373, 520 S.E.2d 142 (1999). Generally, negligence is a factually controlled concept whose determination best rests with the jury. *Faile v. South Carolina Dep't of Juvenile Justice*, 350 S.C. 315, 566 S.E.2d 536 (2002). The Court appropriately presented the question of negligence to the jury and the jury appropriately returned a verdict in the Plaintiff's favor.

Defendant first argues that negligence, by its very nature is not applicable to workplace wrongs and that Plaintiff "shifted" his argument to negligent supervision "throughout [the] three-day trial." The former sub-argument is made with no legal, precedential support, and the latter sub-argument is made in willful blindness of the record. Defendant next argues that Plaintiff cannot state a negligent supervision claim based on a provision of the South Carolina Tort Claims Act that deals with the custody and control of inmates. This argument, like the prior argument, is facially meritless. Last, the Defendant argues that the Plaintiff's negligence claim was preempted by the Worker's Compensation Act. That argument fails because, in addition to other reasons, the exclusivity provision of the Worker's Compensation Act only applies to personal injuries as defined by the Worker's Compensation Act and nonphysical injuries resulting from a termination are by definition not cognizable personal injuries under the Worker's Compensation Act. As elaborated upon below, Defendant's JNOV motion does not hold water.

3.1.1. Plaintiff's negligence claim is generally legally actionable.

Defendant first argues that the Plaintiff shifted his negligence claim during trial to focus on negligent supervision from what it claims was the claims' former sole focus Defendant's consultant study. As an introductory matter, this argument, to the best of Plaintiff's counsel's recollection, was not raised on the Defendant's mid-trial or post-trial directed verdict motions. Therefore, this argument is not preserved for the purposes of a Rule 50 motion. *Marsh v. S.C. Dep't of Highways & Pub. Transp.*, 298 S.C. 420, 423, 380 S.E.2d 867, 869 (Ct. App. 1989) ("A motion for judgment notwithstanding the verdict is limited to the grounds stated in the motion for directed verdict.").

Nevertheless, this negligence claim was always about **both** the Defendant's negligent supervision of its subordinates **and** the negligent way it protected confidentiality during its consultant study. No shifting occurred. Indeed, the negligence component of the Complaint focused on the intersection between the consultant study and supervision of employees alleging: Defendant's "owed Plaintiff a duty to conduct a confidential investigation when it hired [its consultant]" based on **"Defendant's ordinary duty to supervise its agents and employees**, the representations it made to Plaintiff and others about confidentiality, and the knowledge that harm could foreseeably occur to Plaintiff's reputation if the Defendant did not ensure and maintain confidentiality." (Compl. ¶¶ 64-65). The Plaintiff feels that these allegations, unchallenged by a Rule 12 motion, were broad enough to capture the entirety of the Plaintiff's negligence claim as argued at trial. Furthermore, "Negligent Supervision" was explicitly discussed in the first paragraph of Plaintiff's discussion on negligence in opposition to Summary Judgment. (Pl. Memo. p. 12) ("Negligent supervision cases 'generally turn on two fundamental elements—knowledge of the employer and foreseeability to harm to third parties.'" (*quoting, Doe v. ATC, Inc.*, 367 S.C. 199, 206, 624 S.E.2d 447, 450 (Ct. App. 2004)) Next, on brief, Plaintiff explicitly wrote:

Here, in **addition to the discussion of duties arising for negligent supervision** and due to the propensity of foreseeable harm to Plaintiff's future earning capacity and reputation at § 4.2.3 above, Defendant owed an enforceable duty to Plaintiff when it gratuitously promised to maintain Plaintiff's reports to its third-party consultant [as confidential].

(Pl. Memo p. 18). The Court can additionally take judicial notice that Plaintiff's pre-trial brief discusses negligent supervision at pages 6 and 15-16. Thus, Defendant's suggestion that Plaintiff's negligence claim shifted mid-trial to involve the concept of negligent supervision is inconsistent with the record.

Next Defendant suggests, citing to the general concept of at-will employment and irrelevant precedent from public policy discharge cases, that a negligence claim cannot be brought in an

employment setting. The Defendant cites to no precedential support for their bold suggestion on this front. Furthermore, this argument, to the best of Plaintiff's counsel's recollection, was similarly not raised on directed verdict. *See, Marsh*, 298 S.C. 420, 423, 380 S.E.2d 867, 869 (Ct. App. 1989) ("We need not address the Department's contention concerning assumption of risk because its motion for directed verdict did not include as a specific ground therefor that Marsh assumed the risk of injury by driving down Highway 41 toward the area of the defective tree."). Nevertheless, the Court has recognized the viability of negligence actions in the work place where not precluded by the exclusivity provision of the Worker's Compensation Act. *Loges v. Mack Trucks, Inc.*, 308 S.C. 134, 137, 417 S.E.2d 538, 540 (1992) ("Thus, to the extent appellant alleges Mack Trucks' negligence was the proximate cause of injury arising from the slanderous conduct of Grove, her claim is not barred by the Act."); *See also, Colleton v. Charleston Water Sys.*, 225 F. Supp. 3d 362, 373–74 (D.S.C. 2016) ("Because physical harm likely is not required to state a claim for negligent supervision, the Court does not agree . . . that the South Carolina workers' compensation law's exclusivity provision, S.C. Code § 42-1-540, necessarily preempts Plaintiff's negligent supervision claim."). The Worker's Compensation Act does not preclude Plaintiff's negligence claim as discussed in §3.13 below and there is no precedential support for the Defendant's conclusory suggestion that an at-will employee may not maintain a negligence claim. *See, Marsh*, 298 S.C. 420, 423, 380 S.E.2d 867, 869 (Ct. App. 1989); Rule 50(b), SCRCP ("A party who has moved for a directed verdict may move to have the verdict and any judgment entered thereon set aside and to have judgment entered in accordance with his motion for a directed verdict[.]").

3.1.2. Plaintiff's negligence claim is not precluded by the South Carolina Tort Claims Act.

The Defendant, citing to a Tort Claims Act Exception that discusses the custody and control of inmates, claims that it is entitled to Tort Claims Act immunity. (Def Mot. p. 4); (*citing*, S.C. Code Ann. § 15-78-60(25)). Plaintiff was not a "student, patient, prisoner, inmate, or client of any

governmental entity” as such this argument is irrelevant. Defendant, within this section of its argument, also appears to assert that “intent” is an element of negligent supervision and gross negligence such that negligent supervision and/or gross negligence is foreclosed by the Act. (Def. Mot. pp. 4-5). Even if S.C. Code Ann. § 15-78-60(25) applied to this case, intent is not an element of a negligent supervision claim against an employer; instead, negligence or gross negligence alleged in a supervision context is premised on the employer’s actions or inactions in supervising its employees not the actual actions or inactions of those employees. *James v. Kelly Trucking Co.*, 377 S.C. 628, 631, 661 S.E.2d 329, 331 (2008) (“[T]he employer’s liability under such a theory does not rest on the negligence of another, but on the employer’s own negligence”). Similarly, while intent can be indicative of gross negligence, intent is not necessarily required to establish gross negligence. *Jackson v. S.C. Dep’t of Corr.*, 301 S.C. 125, 126, 390 S.E.2d 467, 468 (Ct. App. 1989), *cert. granted, decision aff’d*, 302 S.C. 519, 397 S.E.2d 377 (1990) (“A defendant is guilty of gross negligence if he is so indifferent to the consequences of his conduct as not to give slight care to what he is doing. [] Gross negligence involves a conscious failure to exercise due care.”); *Steinke v. S.C. Dep’t of Labor, Licensing & Regulation*, 336 S.C. 373, 395, 520 S.E.2d 142, 153 (1999) (Noting gross negligence, in addition to the above, has “also” been defined to include intentional conduct.). Plaintiff is not covered by S.C. Code Ann. § 15-78-60(25). Moreover, intent is not a requisite element of his negligence claim and the tort claims act is no bar to recovery. Furthermore, as with Defendant’s prior arguments, this argument in whole (or at least in part) was not raised by the Defendant on its directed verdict motion; so, it cannot be raised now.

3.1.3. Plaintiff’s negligence claim is not precluded by the Worker’s Compensation Act.

Defendant next argues that Plaintiff’s negligence claim is precluded by the exclusivity provision of the South Carolina Worker’s Compensation Act. (Def. Mot. pp. 5-7); (*citing*, S.C. Code Ann. § 42-1-540). The Court appropriately rejected this argument when raised twice by the Defendant

between its directed verdict motions. Plaintiff did not suffer a personal injury as defined by the Worker's Compensation Act; so the Act does not preclude his recovery.

The Workers Compensation Act Exclusivity provision provides:

The rights and remedies granted by this title to an employee when he and his employer have accepted the provisions of this title, respectively, to pay and accept compensation **on account of personal injury or death by accident**, shall exclude all other rights and remedies of such employee, his personal representative, parents, dependents or next of kin as against his employer, at common law or otherwise, on account of **such injury, loss of service or death**. Provided, however, this limitation of actions shall not apply to injuries resulting from acts of a subcontractor of the employer or his employees or bar actions by an employee of one subcontractor against another subcontractor or his employees when both subcontractors are hired by a common employer.

S.C. Code Ann. § 42-1-540. (emphasis added). The ability of the exclusivity provision to exclude Plaintiff's claims turns on the definition of personal injury under the act. The Act defines personal injury as a **physical injury; stress or mental illness accompanied by a physical injury**; or stress or mental illness unaccompanied by physical injury, but accompanied by extraordinary and ordinary workplace conditions **not related to "normal employer/employee relations . . . such as disciplinary actions . . . or terminations"**. S.C. Code § 42-1-160. That is, definitionally, Plaintiff's lawsuit did not involve any personal injury covered by the exclusivity provision; whereas, the cases Defendant cites all involve personal injuries under the Act. Defendant is comparing apples and orangutans.

Instead, courts have recognized that the Act does not preclude the recovery of proprietary damages such as lost income and reputation damages. Former Chief Justice Toal, writing for the majority in *Dockins v. Ingles Markets, Inc.*, reasoned:

An injury to reputation affects a proprietary interest and is not a personal injury. [] We hold injury to one's reputation is not the type of injury envisioned by the Workers' Compensation Act, and it is, therefore, inapplicable.

Dockins v. Ingles Markets, Inc., 306 S.C. 287, 288, 411 S.E.2d 437, 438 (1991), *overruled on other grounds by Sabb v. S.C. State Univ.*, 350 S.C. 416, 567 S.E.2d 231 (2002).¹ Similar to *Dockins*, Judge Herlòng, in *Frasier v. Verizon Wireless*, recognized that invasion of privacy and false imprisonment claims would not be precluded by the Act's exclusivity provision where they concerned dignitary harms. *Frasier v. Verizon Wireless*, No. 8:08-356-HMH, 2008 WL 724037, at *3 (D.S.C. Mar. 17, 2008). The *Dockins* court also noted that focusing on peripheral damages that could possibly be compensable under the Act should not persuade the Court to dismiss an otherwise non-compensable claim not alleging personal injury. *Dockins*, 306 S.C. at 288 (“[T]o block the main thrust of this action because of peripheral items of damage, when a compensation claim could not purport to give relief for the main wrong of injury to the reputation, would be incongruous, and outside the obvious intent of the exclusiveness clause.”); *quoting, Foley v. Polaroid Corp., Polaroid Corp.*, 381 Mass. 545, 413 N.E.2d 711 (1980) (holding a claim for Intentional Infliction of Emotional Distress is barred by the Massachusetts Workmen's Compensation Act exclusivity provision, but claims for defamation, malicious prosecution, violation of civil rights, and loss of consortium arising out of employment were not even where peripheral damages sought might be compensable under the Act). Here, the Act explicitly considers non-physical injuries arising from ordinary employment actions including “disciplinary actions” and “terminations” (at issue here) non-compensable. S.C. Code Ann. § 42-1-60(C).

The South Carolina Supreme Court echoed this distinction between the application of the exclusivity provision to compensable versus noncompensable in *Loges v. Mack Trucks, Inc.* where it explicitly noted that an employee's negligent supervision claim resulting in dignitary harm was not preempted by the Act; whereas, other tort claims resulting in personal injury were. *Loges v. Mack Trucks*,

¹ *Dockins* was overruled by *Sabb v. S.C. State Univ.* however only to the extent that it “could be read to provide the circuit court [was] without subject matter jurisdiction to hear Sabb's claims.” *Sabb v. S.C. State Univ.*, 350 S.C. 416, 422, 567 S.E.2d 231, 234 fn. 2 (2002).

Inc., 308 S.C. 134, 137, 417 S.E.2d 538, 540 (1992) (“Thus, to the extent appellant alleges Mack Trucks' negligence was the proximate cause of injury arising from the slanderous conduct of Grove, her claim is not barred by the Act.”). Judge Michelle Childs has similarly rejected the notion that all negligence based claims arising from employment are preempted by the Act, holding:

In the instant case, Hand seeks damages associated with her termination of employment. The injury of which she complains is pecuniary in nature and not remotely related to any injury to her person. The Act's exclusivity provision and reference to “personal injury or death by accident” clearly was not intended to encompass the potential losses associated with Hand's allegations here.

...

In the present case, Hand has not alleged that she suffered damages as a result of a personal injury. Therefore, her negligent misrepresentation cause of action is not statutorily barred by the exclusivity provision of the South Carolina Workers' Compensation Act.

Hand v. SunTrust Bank, Inc., No. 6:11-CV-00501-JMC, 2012 WL 3834859, at *2-3 (D.S.C. Sept. 4, 2012)

Judge Richard Gergel has similarly reasoned that negligence claims between an employer and employee can be actionable where the damages sought would not be compensable under the act.

Colleton v. Charleston Water Sys., 225 F. Supp. 3d 362, 373–74 (D.S.C. 2016). His analysis would particularly apply here:

Because physical harm likely is not required to state a claim for negligent supervision, the Court does not agree . . . that the South Carolina workers' compensation law's exclusivity provision, S.C. Code § 42-1-540, necessarily preempts Plaintiff's negligent supervision claim.

Id.

The above authority demonstrates that the Worker's Compensation Exclusivity provision does not apply to a case like this where Plaintiff's harm is premised on nonphysical harm arising from a termination. Therefore, the exclusivity provision does not bar Plaintiff's claims and the Defendant's JNOV motion should be denied.

3.2. The Court's verdict form was proper.

Defendant last claims that the Court's verdict form was misleading and warrants a new trial. Insomuch as the "error of law" component of this argument is premised on its earlier arguments, that argument should be rejected for the reasons stated above.

Rule 59, SCRCP motions must be premised on a prior legally cognizable ground for granting a motion for a new trial, Defendant does not articulate what prior ground it is relying on, but presumably it is asserting jury prejudice. "Granting a new trial due to suspicions of deliberation quality is a flagrant deviation from premising a new trial upon the facts." *Youmans ex rel. Elmore v. S.C. Dep't of Transp.*, 380 S.C. 263, 282, 670 S.E.2d 1, 10 (Ct. App. 2008). Here, as a threshold matter, Defendant's suggestion that the jury was "mislead" by the verdict form after being twice, properly charged (without a challenge to the relevant charges) on the law of negligence is too speculative to warrant a new trial. *See, S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 303, 641 S.E.2d 903, 908 (2007) ("The prejudicial effect of a defective verdict form may be cured where the trial court provides clear and cogent jury instructions.").

Ultimately, "[t]he trial judge has the discretion to determine how a case is submitted to the jury." *Id.* 641 S.E.2d at 906. The Court in the above cited *SCDOT* case rejected a challenge to a verdict form on the sole grounds that the verdict form was "misleading" and that a general verdict form would have simplified the case. *Id.* Similarly, here, the Court should reject the Defendant's challenge that the Court's verdict form was misleading and that a more complex verdict form would have been better.

Here, the Court's verdict form was concise and comprehensive. Moreover, any alleged defect was cured by the Court's reading of unchallenged jury instructions on the law of negligence two separate times. Defendant, within this context, cannot establish a reasonable argument in support of

a new trial. Therefore, based on the foregoing precedent, Plaintiff respectfully requests that this Court deny Defendant's motion for a new trial.

4. Conclusion

Plaintiff, as explained above, respectfully asks this Court to DENY Defendant's motion for judgment notwithstanding the verdict and DENY Defendant's motion for a new trial.

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Attorneys for Plaintiff

March 8, 2019
Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	2017-CP-40-06172
	)	
	)	
	)	
	)	
MICHAEL EDMONDS,	)	
PLAINTIFF,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
CITY OF COLUMBIA,	)	
DEFENDANT.	)	
_____	)	

February 19-22, 2019
Columbia, South Carolina

B E F O R E:

THE HONORABLE DANIEL DEWITT HALL, JUDGE.

A P P E A R A N C E S:

PAUL PORTER, ESQ.
Attorney for the Plaintiff

DANA MARIE THYE, ESQ.
EMMA BENNETT-WILLIAMS, ESQ.
Attorney for the Defendant

DCRP

1 THE COURT: Thank you.

2 Ladies and gentlemen, at this time, we're going to
3 begin the trial. We're going to allow the lawyers to give
4 their opening statements.

5 Mr. Porter.

6 MR. PORTER: Thank you, Your Honor. May it please the
7 Court.

8 Men and women of the jury, thank you. First off, I am
9 here before you on behalf of a broken man. Michael Edmonds,
10 who I represent, put his life and soul into firefighting, so
11 much so that it became his identity. That identity was
12 shattered on July 5th, 2017, when he learned that the open
13 door policy at the City of Columbia was don't let the door
14 hit you on the way out. Why that happened is why we're
15 here.

16 You will have the opportunity to hear about it
17 firsthand from Mr. Edmonds. You will find that he is a
18 good, loyal, hardworking man with high integrity and high
19 conscience. You will also find that he was so deeply
20 affected by what happened that he is still torn up by it
21 today. Michael is not a weak man, rather, he is more like a
22 marathon runner. He has put in mile after mile only to have
23 his feet swept out within view of the finish line.

24 This is the opening statement. My job here is to tell
25 you about the case that we will put in front of you, talk

1 briefly about what's called the standard of review and
2 briefly comment on legal claims. Now, understand with
3 respect to the review standard and the legal claims, those
4 are matters of law. As His Honor stated before, he is in
5 charge of the law. So to the extent what I say differs from
6 what he says, what he says goes.

7 The facts in this case span 30 years. Mr. Edmonds was
8 hired by the City Fire Department on July 13th, 1987, as an
9 entry level firefighter. He was promoted six times over the
10 course of 30 years, ultimately, reaching the position of
11 assistant chief, one position below the fire chief. You
12 will find that he is the opposite of a yes man. That when
13 he saw something wrong, he said something. And I believe
14 the evidence will show you that that became his downfall.

15 You see, there were serious problems at the fire
16 department between 2015 and 2017, including extreme
17 understaffing, overuse of overtime and department budget and
18 policies that were not applied the same from employee to
19 employee. Michael brought these concerns up to his chain of
20 command, but nothing happened and it only got worse.
21 Because of the staffing issues, because of low morale and
22 because of some gross misbehavior of firefighters that was
23 reported in the news, the top city official, the city
24 manager decided to call in a third party consultant group to
25 analyze the problems of the fire department.

1 On March 22nd, 2016, she sent out an e-mail to all the
2 firefighters stating that what they told the consultant
3 would be confidential and that the results of the report
4 would be reported anonymously. Two days later, Mr. Edmonds
5 was interviewed by the consultant.

6 Later that afternoon, a fellow assistant chief, a fire
7 marshal says to him, hey, the consultant told me you had a
8 lot to say. She said it was good stuff, but you had a lot
9 to say. Now, the fire marshal was very close to the fire
10 chief and Mr. Edmonds was immediately was concerned that his
11 confidentiality had been broken. So he wrote an e-mail to
12 the city manager telling her what had happened.

13 You see, Mr. Edmonds had brought his concerns up
14 through the chain of command in the past in a less
15 comprehensive manner, had gone to human resources. But this
16 was the first time he would be on record as bringing up his
17 concerns outside of the chain of command, albeit
18 appropriately, in such a comprehensive manner, so he was
19 worried. The city manager told him, I will look into it.
20 You have nothing to worry about.

21 However, I believe the evidence will show you that even
22 though this survey was about the fire department as a whole,
23 including specifically the command staff, that the fire
24 chief was in the room the time the results were read. So as
25 far as Mr. Edmonds was concerned, a fellow assistant chief,

1 his confidentiality was meaningless from the get-go.

2 Next, on June 2nd, 2016, he's called to meet with the
3 second highest ranking official at the City, a senior
4 assistant city manager. There, at that official's request,
5 he tells him about his concerns and he provides
6 documentation. That documentation was specifically marked
7 confidential. Nevertheless, one month later, on July 5th,
8 2016, Mr. Edmonds is called into a surprise meeting with the
9 fire chief. There, he's confronted with sending an e-mail
10 marked confidential to the fire chief's superior. He's
11 told, Be quiet, this is my meeting. And he's told, Do you
12 know how powerful I am?

13 I believe the evidence will show you that the fire
14 chief attempted to remove Michael at that time. Michael
15 will testify that the next year was rough. He will tell you
16 that he was left out of the loop and excluded from meetings
17 he should have otherwise been a part of. And that although
18 the fire chief told him to his face that he was doing his
19 job well, you could cut the tension with a knife.

20 Things move slow in a bureaucracy. Almost a year
21 later, the fire chief finally had the cover to terminate
22 Michael. On June 19, 2017, a local reporter published a
23 news article that falsely, in our mind, accused Michael of
24 several things: Falsely reporting insurance numbers, of
25 having an unethical friendship with an equipment supplier

1 and for being responsible for facilities that were in such
2 disrepair, the article speculated that a little old lady had
3 died as a result of it. None of this was true. The fire
4 chief knew it was not true. The department had performed
5 its own internal investigation which cleared Michael. Mr.
6 Edmonds did not have the authority to order that facilities
7 be repaired by his own order.

8 Even though they knew it was false, the fire chief
9 brought Mr. Edmonds into another surprise July 5th meeting,
10 this time in 2017, where he said the facilities issue and
11 the glove issue, which was a reference to this supplier
12 relationship, is the last straw. I have to ask for your
13 resignation. Now, Mr. Edmonds said, Why? I've done nothing
14 wrong. But the fire chief said his mind was made up.

15 Over the next two days, Mr. Edmonds, who had no desire
16 to stop working and was less than a week shy of the
17 milestone of his 30th year begged for his job. He begged
18 for any job. And though he had been complaining that the
19 department was woefully understaffed for years, he was told
20 that there was nowhere for him to go.

21 Now, the Defendant may suggest that the facts will show
22 that his resignation was voluntary, but I think the evidence
23 will show you that it was anything but. I think you will
24 find that a termination letter was already being prepared at
25 the time and that Mr. Edmonds was put up against the wall

1 and pressure was applied to make him leave the department
2 well before his time.

3 To explain all of this to you, you will hear from Mr.
4 Edmonds directly. You will hear from the supplier he was
5 accused of having an inappropriate friendship with and you
6 will hear from Mr. Edmonds' wife, who will talk about what
7 this has done to her husband. You will also hear from two
8 battalion chiefs, who will share their relevant knowledge
9 about what was going on. You will hear from the city
10 manager and the former senior assistant city manager.

11 Understand with those last two, I think they wind up
12 what the law calls an adverse witness. All that matters as
13 far as you're concerned with that is their testimony may be
14 a little more difficult to follow and I appreciate in
15 advance your attention as we try to work through it.

16 Now, the fire chief, Aubrey Jenkins, who I've mentioned
17 several times may or may not be called to testify by the
18 Defendant and there's no requirement that he testify. I
19 want you to know that you will find that a fire chief, like
20 Mr. Jenkins, is a good, hardworking person who has given
21 decades of service to the fire department. I will tell you
22 that everyone in this room who knows the fire chief respects
23 the fire chief and that includes Mr. Edmonds, despite what
24 was done to him. However, I do want you to understand that
25 just because the fire chief is a good likeable charismatic

1 person that that does not mean the City can get a free pass
2 for what happened here.

3 You will learn that in the background, the fire
4 department included internal politics and firefighters
5 jockeying for positions, that Mr. Edmonds who had gone out
6 of his own pocket to get a Master's Degree in fire science
7 was said to be gunning for Chief Jenkins' job. And with
8 that in the background, when the senior assistant city
9 manager told the fire chief about Edmonds' complaints and
10 there were already known problems at the department, Edmonds
11 became yet another problem. You will find that while Mr.
12 Edmonds is not perfect that he did the right thing here. He
13 did what we want public servants to do and that the
14 Defendant needs to be held accountable.

15 I suspect the Defendant's lawyers, who I've come to
16 know are very good lawyers, will try to cast doubt on what
17 I've told you because that is their job. However, at the
18 end of the trial, I think you will find the facts are more
19 or less like I just summarized them to you. And if you do,
20 I'm going to ask you to return a jury verdict in favor of
21 Mr. Edmonds.

22 You do that by applying the law, applying the evidence
23 you see and the testimony you hear to what I mentioned
24 earlier, the standard of review. The standard of review in
25 a civil trial is called the preponderance of the evidence.

1 What that means is that if you find the facts, applied to
2 the law as the Judge charges it are more than likely how it
3 was, then you must find for Mr. Edmonds. This is not an
4 overly burdensome standard. It doesn't require proof by a
5 hundred percent. It's more like 50 point 001 percent to get
6 a passing grade.

7 Compare it to the criminal law standard. We do not
8 have to prove this by proof beyond a reasonable doubt. Or
9 an intermediate standard called clear and convincing
10 evidence. That is not required either. Instead, we merely
11 have to prove it by a preponderance of the evidence. In
12 sports, it would be akin to the fact that Mr. Edmonds and I
13 do not have to score a touchdown and spike the football in
14 the end zone, instead, we merely need to cross the 50-yard
15 line by a chain link.

16 The legal claims we allege are defamation, wrongful
17 discharge and negligence. The Judge will explain the law
18 later, so I will only be brief.

19 Our defamation claim alleges that the City defamed Mr.
20 Edmonds by act and by insinuation when it terminated him on
21 false grounds in a way that grossly humiliated him. Our
22 wrongful discharge claim means that Mr. Edmonds was
23 terminated because he made reports about serious policy
24 concerns. Our negligence claims means that the fire chief
25 was not appropriately supervised and that the department

1 failed to maintain its promises of confidentiality and
2 anonymity, both resulting in serious harm to Mr. Edmonds.

3 Should you find that we have proven any or all of these
4 claims by a preponderance of the evidence, then you will
5 enter a verdict in Mr. Edmonds' favor and you will have to
6 award money damages. Unfortunately, you, the jury, are not
7 empowered to restore Mr. Edmonds back to his job or other
8 extraordinary relief. All the law really allows you to do
9 is to try to use money to fix the pain. We will ask you for
10 the amount he lost because he lost his job, which was
11 approximately \$108,096.75 in back wages and an additional
12 \$20,000 in lost benefits. In addition to those hard
13 numbers, I will ask you to assign a reasonable sum of money
14 that is to be decided totally within your discretion for
15 reputational losses, pain and suffering and any other harm
16 you find.

17 At its core, the word verdict, which is what is your
18 job to do, to render a verdict, is to speak the truth. The
19 Judge, me and the Defendant do not get to decide the facts.
20 You do. You were conscripted into jury service because you
21 are better at sorting out the facts and weighing witness
22 credibility than we are. You are able to use your combined
23 life experience and common sense to figure out the truth.
24 And I, along with Mr. Edmonds and everybody here are very
25 grateful to you for your participation in this important

1 part of our constitutional legal process where a jury of
2 peers decides a dispute among civil litigants.

3 After everything is done and the evidence has been
4 presented, I will ask two things of you. First, that you
5 render a verdict that speaks the truth. Second, that in so
6 doing, you do justice. Thank you. Thank you for your time.

7 THE COURT: Thank you, Mr. Porter.

8 Ms. Williams or Ms. Thye.

9 MS. WILLIAMS: May it please the Court.

10 Good afternoon, ladies and gentlemen. Leadership does
11 not automatically come with a title or with longevity.
12 Leaders are impactful. Leaders are influential.

13 Now, for the next couple of days, we're going to talk
14 about work. Now, I know what you're thinking. You're not
15 at work right now. You're sitting in the jury box. And
16 Emma is telling me that for the next couple of days, we're
17 going to talk about work. Well, we're going to talk about
18 work. We're going to talk about job duties. We're going to
19 talk about responsibilities, team work. We're going to talk
20 about having confidence in your coworkers, confidence in
21 your staff. We're going to talk about leadership and what
22 leadership looks like and why all of that is important in
23 the work force.

24 Now, we all have had jobs or are currently working.
25 Maybe some of us are retired, self-employed. Some of us are

1 supervisors, bosses. Some of us own our own businesses.
2 But regardless of our position, we all have
3 responsibilities. We all have duties at work. And it takes
4 everyone performing their individual duties for an
5 organization to run efficiently.

6 I think of the employee/employer relationship sort of
7 like a marriage, okay? You have an employee who's looking
8 for a job. They see a job opening. They apply for that
9 job. They fill out an application. The employer is looking
10 for employees. They post a job announcement. They get
11 applications in. They start going through applications and
12 they pick some candidates that they want to interview.
13 That's like the dating phase.

14 So the employee comes in for an interview, speaks with
15 the employer. The two of them decide whether or not this is
16 something that can be a viable employment relationship. And
17 if both parties decide that they want to enter into that
18 relationship, then now we have the marriage. We have that
19 employee/employer relationship.

20 Now, sometimes an employee will get into a new job and
21 think hey, this is not what I thought it was going to be.
22 This really isn't the type of job that I thought I would
23 like and he resigns, he leaves that job. Or the employer
24 looks at the employee and thinks this really isn't the type
25 of person who fits well here and then they separate that

1 employee. And sometimes you have employees who stay with an
2 organization for a long period of time, 30 years or so, and
3 they retire. That's a happy ending.

4 Sometimes you have employees who've worked for a
5 company or an organization for a long period of time. They
6 did their job well, no complaints, performed up to standard.
7 But then at some point, something changes and the employer
8 has to sit back and think am I still getting the quality
9 work, the type of work that I need from this employee? And
10 that employer, that supervisor, that boss, that leader has
11 to make a difficult decision. And oftentimes, they decide
12 to let that person go.

13 Now, not to diminish anybody's job, but when we talk
14 about tasks and responsibilities today, we're talking about
15 the responsibilities and the tasks and the duties of the
16 Columbia Fire Department. The men and women of the fire
17 department have dangerous jobs. So you can imagine the
18 importance of team work. You can imagine the importance of
19 everybody fulfilling their roles and responsibilities and
20 the importance of leadership.

21 Now, Chief Jenkins, he's the chief of the fire
22 department, but he can't lead everything on his own. So he
23 has a staff, he has leaders under him who are assigned
24 specific tasks and specific responsibilities to make sure
25 that the fire department runs effectively and efficiently.

1 Not just for the good of the firefighters, not just for the
2 good of the department, but for you, for me, for the
3 citizens of the City of Columbia who may need the fire
4 department in a time of emergency.

5 The Plaintiff was one of those employees who worked for
6 the City of Columbia for 30 years. Chief Jenkins hired --
7 Chief Jenkins actually rehired him after he retired from the
8 Columbia Fire Department and he became in a leadership role
9 within the City. But after a while, Chief Jenkins had to
10 take a look at the performance of the Plaintiff and he had
11 to make some decisions.

12 Now, you heard Mr. Porter say that the Plaintiff, if he
13 saw something, he said something. Well, the issue, as the
14 evidence will show, is not that he said something. The
15 issue is that he's a leader. Leaders do. Leaders
16 influence. Leaders lead.

17 You will hear Chief Jenkins testify and he will talk
18 about the performance of the Plaintiff. He will talk about
19 the Plaintiff's duties and responsibilities and how some of
20 those duties and responsibilities went lacking.

21 You heard Mr. Porter mention the survey that was
22 conducted by the City of Columbia. Well, the City of
23 Columbia commissioned a third party independent contractor
24 to come in and do an assessment of the fire department, Ms.
25 Liz Stewart. You'll also hear from her. She will tell you

1 about the assessment. She will tell you about the
2 safeguards that she put in place to maintain anonymity and
3 to make sure that she communicated the changes and the
4 suggestions of all the participants of the survey to upper
5 leadership.

6 Now, you also heard Mr. Porter say that the Plaintiff
7 had been complaining for a while, had been making
8 suggestions or if he saw something, he said something. He's
9 been doing that for a while. He did it before the survey,
10 the evidence will show that, he did it after the survey.
11 And, actually, the survey took place in 2016. The Plaintiff
12 was separated from employment in 2017. The evidence will
13 show that the Plaintiff had been seeing something and saying
14 something for, at least, two years prior to his separation.

15 So we ask you, ladies and gentlemen, to consider all of
16 the evidence, consider that timeline and why it would take
17 so long for the employee to be separated if he had been
18 seeing something and saying something for two years.

19 The evidence will show -- we're pretty sure the
20 evidence will show it was a lack of responsibility, it was
21 poor decisionmaking, it was errors in his duties, it was a
22 lack of accountability and it was a simple lack of
23 leadership.

24 And yes, he had been with the City for 30 years. But
25 again, leadership does not come with a title in longevity.

1 Leaders don't just see something, then say something.

2 Leaders do.

3 So at the conclusion of this case, I'm going to come
4 back before you and ask that you find in favor of the City
5 of Columbia. Thank you.

6 THE COURT: Thank you, Ms. Williams.

7 Mr. Porter, call your first witness.

8 MR. PORTER: Yes, Your Honor. The Plaintiff calls Seth
9 Newton.

10 SETH NEWTON, after being duly
11 sworn, testified as follows:

12 THE CLERK: Thank you. Have a seat in the witness
13 stand, please. State your name for the record.

14 THE WITNESS: Seth Newton.

15 DIRECT EXAMINATION

16 BY MR. PORTER:

17 Q Mr. Newton, tell us a little bit about yourself, what
18 do you do, that sort of thing.

19 A So my name is Seth Newton. I'm a volunteer firefighter
20 in the community in which I live. From there, my dad
21 started a family business, Newton's Fire and Safety. We
22 provide fire and safety equipment to various municipalities,
23 volunteer fire departments across North and South Carolina.

24 Q And where are you located?

25 A In a little small community called Swepsonville, North

1 Carolina. It's between Greensboro and Raleigh.

2 Q Were you ever camping buddies with Michael Edmonds?

3 A No, sir.

4 Q How would you describe your relationship with Michael
5 Edmonds?

6 A It was always a very professional relationship. I
7 always kept it at arms length. I only had transactions
8 during business time. He was always friendly to interact
9 with, but that was where it ended at.

10 Q Were you ever contacted by the City asking whether you
11 had an inappropriate relationship with Michael Edmonds?

12 A No, sir.

13 Q Were you involved in the sale of gloves to the City of
14 Columbia in 2016?

15 A Yes, sir.

16 Q Was there anything problematic about the purchase of
17 those gloves with you and Michael's relationship?

18 A No, sir. In fact, it went out to bid, public bid, an
19 e-mail sent out notifying all perspective bidders. It was
20 posted on the City's website following all the City
21 procurement guidelines. The bid went out. It was actually
22 cancelled and then posted right back again before it ever
23 opened. So there was plenty of notification, plenty of time
24 for multiple bidders to bid.

25 Q Do you remember what sort of gloves these were?

1 A It was a Honeywell Super glove.

2 Q Is the Honeywell Super glove okay to use in
3 firefighting?

4 A Yes, sir.

5 Q What about the idea of ordering mass quantities of the
6 super glove prior to sizing?

7 A Oh, that's not uncommon. They're, actually, generic
8 sizes. It's not like it's a specific tailored glove. It's
9 just a generic glove size just like what you would go to the
10 department store and purchase, small, medium, large, extra
11 large. In fact, we ended up taking the gloves back
12 afterwards.

13 Q And if y'all have too many of the wrong size glove, can
14 they send that back to you?

15 A Yes, sir.

16 MR. PORTER: Thank you, sir.

17 THE COURT: Ms. Williams.

18 MS. WILLIAMS: Yes, Your Honor.

19 CROSS-EXAMINATION

20 BY MS. WILLIAMS:

21 Q Good afternoon, Mr. Newton. I just have a couple of
22 questions for you. You sold the Honeywell Super gloves to
23 the City of Columbia in 2016, correct?

24 A Yes, ma'am.

25 Q And do you know whether those gloves were part of a

1 trial in 2016 conducted by the City?

2 A That, I'm not sure.

3 Q And City returned that purchase of gloves to you,
4 correct?

5 A That is correct.

6 MS. WILLIAMS: No further questions.

7 THE COURT: Anything else?

8 MR. PORTER: No, Your Honor.

9 THE COURT: Thank you, Mr. Newton. You can step down.

10 MR. PORTER: And I believe I have confirmation from the
11 other side, he is free to leave; is that correct?

12 MS. WILLIAMS: Yes.

13 THE COURT: Then Mr. Newton, you're excused.

14 (Witness steps down and is excused.)

15 THE COURT: Ladies and gentlemen, this is an
16 appropriate place for us to now take a lunch break. I'm
17 going to allow you to go to lunch. Be back at 3 o'clock.
18 Be back in your jury room ready to go at 3 o'clock.

19 Again, do not discuss the case. Don't look on your
20 cell phones, don't do any internet searches, don't discuss
21 it even when you're back in the jury room, don't discuss it
22 with anybody you see. Enjoy your lunch.

23 Everyone remain seated while this panel is excused.

24 (WHEREUPON, the jury exits the courtroom at 1:27 p.m.)

25 THE COURT: Anything further from the Plaintiff at this

1 time?

2 MR. PORTER: No, Your Honor.

3 THE COURT: From the Defense?

4 MS. WILLIAMS: No, Your Honor.

5 THE COURT: The Court does have concern, two jurors
6 seemed like they were sleeping most of the time during
7 opening and then even during the brief testimony of Mr.
8 Newton. I'm not sure how to handle that. Did anyone else
9 become aware of that?

10 MR. PORTER: I noticed one juror who did not appear
11 engaged, but I did not see the second.

12 THE COURT: Maybe they weren't sleeping, maybe they
13 just had their eyes closed. But I will be mindful of that.
14 I would hate to lose two and then stick our alternates in
15 there for the rest of the trial. But y'all drop a book,
16 ring a bell or something to make sure they open their eyes.

17 We'll be at ease until 3 o'clock.

18 (Lunch break.)

19 THE COURT: You're Juror No. 196; is that right?

20 JUROR: Yes, sir.

21 THE COURT: I got your note. It's Mr. Middleton?

22 JUROR: Yes, sir.

23 THE COURT: You have an emergency?

24 JUROR: Yes, sir.

25 THE COURT: I'm just a little bit curious.

1 THE WITNESS: Michael W. Edmonds, Jr.

2 DIRECT EXAMINATION

3 BY MR. PORTER:

4 Q Mr. Edmonds, please start off by telling the jury a
5 little bit about yourself, where you're from.

6 A Born and raised right here in Columbia in the
7 Dentsville area. I graduated in 1982 from Spring Valley
8 High School.

9 Q What did you do after graduation?

10 A I was a restaurant manager and then, also, worked in
11 plumbing sales until 1987.

12 Q What happened in 1987?

13 A I applied for a job at the fire department.

14 Q Is that the City of Columbia Fire Department?

15 A Yes, sir.

16 Q And when did you come on with the fire department?

17 A July 13th, 1987.

18 Q Before we get into your service at the fire department,
19 tell us a little bit about yourself outside of work.

20 A I have three children, a son that is finishing at
21 Clemson, a daughter who is turning 21, she's a national
22 registered EMT and has finished her degree, and my youngest
23 is a senior in high school and has been accepted to
24 USC-Beaufort. And I have a wife of 23 years.

25 Q Are you involved in the community?

1 A I attend Village Church in Blythewood.

2 Q And what do you do right now for a living?

3 A I'm a handyman, a contractor.

4 Q How long have you been doing that full time?

5 A Since July 5th of 2017.

6 Q Was that your last full day of employment with the
7 City?

8 A Yes, sir.

9 Q So in all, we have you working at the City from July
10 13, 1987 to July 5, 2017?

11 A Yes, sir.

12 Q Other than the fire department, have you ever been
13 terminated from or asked to resign from a job?

14 A No, sir.

15 Q What was your first position at the fire department?

16 A Entry level firefighter.

17 Q What drew you to the fire department?

18 A I had a friend who was a firefighter, had been a
19 firefighter for a couple of years prior. I knew him all my
20 childhood life and just admired him, good guy. And I had
21 become married and needed a bit more stability and just
22 wanted to become a firefighter. And he talked me into it
23 and I'm glad I did.

24 Q What did it take for you to become a firefighter at
25 that time?

1 A Then, it was a two-week training program.

2 Q Did you go to a special fire academy back then?

3 A The fire academy sponsored the training, but many of
4 the instructors worked for Columbia, so it was kind of a
5 hybrid program. Maybe one week at the Columbia Fire
6 Department right down here on Senate Street and then the
7 exam maybe was at the old academy at the airport.

8 Q Did you like the job?

9 A I loved the job just as every -- yes, I loved the job.

10 Q How long did you hold the rank of firefighter?

11 A I believe it was three years. It's kind of vague about
12 what happened before 1997. Those 10 years, you just kind of
13 running around trying to learn the job.

14 Q Can you walk us through -- well, I guess, first, what
15 happened in 1997?

16 A That's when I was promoted to captain. That's a
17 supervisor level position and that's big time.

18 Q Can you walk us through the steps between an entry
19 level firefighter and becoming an officer level captain?

20 A Yes, sir. A firefighter is, obviously, the entry-level
21 position. Then, at that time, there was a position called
22 round driver. And, basically, you were a part-time driver
23 whenever the full-time driver was off and then you also
24 fought fire whenever there was no need for a fill-in driver.

25 The next position was engineer and that was the next

1 step up, and that would be a full-time driver. And you were
2 in charge of the apparatus, the placement of the apparatus,
3 getting it safely on the scene. Then the next would be
4 captain.

5 Q Tell us about your duties as a captain.

6 A As a captain, it's an officer-level position. You are,
7 obviously, a supervisor. You maintain supervisory oversight
8 of the crew that's on the truck, the truck itself and the
9 station and all that happens or fails to happen under your
10 command.

11 Q So starting in 1997, how long were you a captain?

12 A From '97 to 2005.

13 Q What happened in 2005?

14 A I was promoted to battalion chief.

15 Q Tell us a little bit about that position.

16 A Just as a captain has three or four personnel under his
17 command and that station under his command, battalion chief
18 supervises multiple stations and multiple captains. And
19 it's a geographical area they call battalions 1, 2, 3, 4, 5.
20 You know, between six and eight stations, maybe 20 to 40
21 personnel and you supervise, again, multi-incident emergency
22 calls and, obviously, multiple personnel.

23 Q What rank did you report to as battalion chief?

24 A When I was first promoted battalion chief, that
25 position reported to the assistant chief of operations.

1 Soon after I was promoted to battalion chief, they developed
2 a position between assistant chief and battalion chief and
3 at that time, they called it shift commander.

4 So I reported maybe for a small short time to the
5 assistant chief, but then soon, it was to a shift commander.
6 And shift commander would be the person that's in charge of
7 the shift.

8 Q Is it fair to say as a battalion chief, you would work
9 a regular shift?

10 A Yes, sir, 24 on and 48 off.

11 Q Those are hours?

12 A Yes, sir.

13 Q How long did you hold the rank of battalion chief?

14 A Two years.

15 Q And what happened after -- what was your next rank?

16 A When they developed a shift commander position, the
17 three founding members of that position, two of them retired
18 and so two positions came open and I was promoted to shift
19 commander and the title was then changed to division chief.

20 Q In that role -- is that the same role you were talking
21 about that a shift commander would oversee the entire shift?

22 A Again, yes, sir, a battalion is in charge of multiple
23 stations, a division chief is in charge of multiple
24 battalions and literally every person that's working in
25 Richland County for a 24-hour period.

1 Q How long did you serve as division chief?

2 A 2007 to 2010.

3 Q What happened in 2010?

4 A January 27th, 2010, ironically, my anniversary, I was
5 invited to a press conference where Chief Anderson was
6 resigning and I was invited to attend in support of Chief
7 Jenkins because they were going to appoint him as interim
8 chief. And when I did report there, soon after that, he
9 asked me to help him out and asked me to serve as his
10 assistant chief of administration.

11 Q How long have you known Aubrey Jenkins, the fire chief?

12 A My entire fire career.

13 Q Can you describe Mr. Jenkins to the jury? And what I
14 mean by that, the way he acts, the way he is.

15 A He's a good man, very involved in his community. He's
16 loved by everyone around him, a very friendly guy. He's one
17 of those guys where you almost can't find anything wrong
18 with him.

19 Q What was your role as an assistant chief?

20 A As assistant chief of administration, I worked with a
21 division chief to help develop the budget, wrote
22 specifications for all of the equipment, apparatus and
23 protective gear that we wore. Went through the whole
24 specification and the RFP bidding process with procurement
25 to make sure that was done right. I liaised with fleet

1 services, who worked on all of our vehicles and I liaised
2 with building services who worked on all of our buildings.

3 Q First, tell us what you mean by liaised.

4 A I'm not allowed to work on a fire truck. I'm not a
5 mechanic. But, obviously, whenever a fire truck does need
6 work, it's going to interrupt our operational flow and a
7 couple of other things. And the same with building
8 maintenance, if there's something to be done in a building,
9 I'm not to do it, I'm just to ensure that everything is
10 running smoothly as it should, along with the assistant
11 chief of operations and the fire chief, keeping everybody in
12 the loop and just making sure it runs smoothly while the
13 tasks that's needed get done by the support services.

14 Q In the beginning, who did you report to as an assistant
15 chief?

16 A There was a deputy chief position, Harry Tinsley, and I
17 reported to the deputy chief.

18 Q How long did you report to the deputy chief?

19 A Until the first of 2016 when he was removed or
20 transferred.

21 Q Who did you report to when that position was removed?

22 A Straight to the fire chief.

23 Q And was your position assistant chief your final
24 position at the City?

25 A Yes, sir.

1 Q How long does a firefighter in South Carolina have to
2 work to retire?

3 A Right now, I believe it's 28 years. When I came in, it
4 was 25.

5 Q When did you hit 25 years?

6 A In 2012.

7 Q Did you retire back then?

8 A I did, yes, sir.

9 Q How did you end up back at the department?

10 A Much like Chief Jenkins and Chief Tinsley and Chief
11 Helms, we went through a competitive process with multiple
12 candidates and were selected by the committee that was
13 responsible for that. And Chief Jenkins was on my
14 committee.

15 Q And based on your testimony, were there other chiefs
16 here who retired and came back to the department?

17 A Yes, sir.

18 Q Was that a common practice in 2012?

19 A It's hard to justify common, but it wasn't an anomaly.

20 Q Now, you mentioned your final day of work was July 5th,
21 2017; is that correct?

22 A Yes, sir.

23 Q We'll get into those details later, but briefly tell us
24 about the nature of your separation.

25 A I was called into an office and I was confronted about

1 the status of the buildings and quote, this glove issue was
2 the final straw. And the glove issue, I had done been
3 through an internal investigation and cleared of that. My
4 boss at the time told me to buy it. The fire chief approved
5 the purchase. Procurement approved the purchase. All the
6 division chiefs and the training chief all endorsed the
7 purchase. But yet, the purchase was the last straw for my
8 termination. I had a problem with that.

9 Q What about the facilities?

10 A As I said before, I don't work on fire trucks and I
11 don't work on facilities. I mean, none of the technicians
12 that work on all the brick and mortar city properties report
13 to me. I'm in charge in none of the scheduling. I have no
14 supervisory oversight with them at all. So to hold me
15 accountable for some failure at maintenance within the
16 buildings, I felt like was unjustified.

17 Q Who was present in that meeting on July 5th?

18 A Fire Chief Aubrey Jenkins and Assistant Chief of
19 Operations Randy Wells.

20 Q And was Randy Wells there as a witness?

21 A Yes, sir.

22 Q How were you getting along with Aubrey Jenkins at that
23 point?

24 A Not very well.

25 Q When did your relationship start being like that?

1 A Ironically, July 5th, 2016, was, I believe, the end of
2 our friendship.

3 Q Do you remember when an outside group came to the City
4 to perform an analysis of the problems in the fire
5 department?

6 A Yes, sir.

7 Q Tell us about that.

8 A There was many problems within the fire department,
9 budgetary concerns, overtime concerns, attrition concerns,
10 hiring concerns and multiple issues of poor judgment, lack
11 of leadership and, frankly, dangerous activity in a couple
12 of fire stations.

13 Q I'm going to hand you a document and ask if you
14 recognize it?

15 A Yes, sir, I do.

16 Q Can you tell us what this is?

17 A On March 22nd, 2016, Ms. Wilson, the city manager, in
18 response to the aforementioned problems in the fire
19 department contracted a third party to do a management study
20 and this was announcing the study to the fire department
21 employees.

22 MR. PORTER: Your Honor, at this time, I would like to
23 introduce this as an exhibit, I believe, without objection.

24 THE COURT: Has it been marked?

25 MR. PORTER: I'm getting it marked now.

1 THE COURT: This will be Plaintiff's Exhibit No. 1
2 introduced into evidence without objection.

3 (Plaintiff's Exhibit No. 1 marked and received into
4 evidence.)

5 BY MR. PORTER:

6 Q Mr. Edmonds, does what I just handed you match this?

7 A Yes, sir.

8 MR. PORTER: Your Honor, at this time, I'd like to show
9 this to the jury. It's a demonstrative copy of Exhibit 1.

10 THE COURT: And this is a blow-up of Plaintiff's
11 Exhibit 1?

12 MR. PORTER: Yes, sir.

13 THE COURT: You may do that.

14 MR. PORTER: Your Honor, I'd ask for permission to have
15 Mr. Edmonds approach Exhibit 1.

16 THE COURT: He can step down.

17 BY MR. PORTER:

18 Q Mr. Edmonds, will you, for the jury's benefit,
19 highlight every reference of confidentiality or anonymity on
20 Exhibit 1.

21 A (Witness complies.)

22 Q And will you read to us the sentences within what
23 you've just highlighted?

24 A Sure. Starting with Paragraph 2, Your input is vital.
25 You will be invited to provide candid feedback during a

1 short and confidential meeting and/or survey with our
2 consultant. This will provide you the opportunity to share
3 any concerns and recommendations for improvement needed.

4 Once the meetings are completed, the results will be
5 compiled and responses will be reported anonymously. The
6 information gathered will help us determine the best
7 possible way to support the improved work place. When you
8 receive scheduling information, please response promptly.
9 Your input is needed and valued and will remain
10 confidential.

11 Q Thank you, sir. You may return to your seat.

12 A (Witness complies.)

13 Q What impact did this e-mail have on you?

14 A It ensured me that what I had to say would remain
15 confidential.

16 Q Why did that matter?

17 A Because I knew if I told the truth, many of the things
18 I would share would not shed a good light on members of the
19 command staff.

20 Q Now, prior to this survey, had you ever raised concerns
21 internally within your chain of command?

22 A Yes, sir.

23 Q Tell us about that.

24 A Well, Chief Tinsley, my boss, and Chief Jenkins both
25 had heard me offer my help in fixing many of the problems

1 that were brought up that were apparent in the fire
2 department.

3 Q What sort of problems were those?

4 A Lack of recruit schools and, basically, big time
5 overspending of overtime line item in the budget.

6 Q How long had it been since recruiting school?

7 A At one time, it had been over a year.

8 Q To what extent were y'all exceeding the overtime
9 budget?

10 A It was well over 200 percent.

11 Q Were you offering solutions for these problems?

12 A Yes, sir.

13 Q Tell us about that.

14 A I offered that I would be happy to -- matter of fact,
15 it was suggested to me by Harry Tinsley to swap me and the
16 assistant chief professional services. I welcomed that
17 opportunity.

18 Q So you were willing to take over hiring is what you're
19 saying?

20 A Yes, sir.

21 Q So you reported these issues internally, what happened?

22 A Nothing.

23 Q And are these things you could have fixed things on
24 your own without approval from the fire chief?

25 A No, sir.

1 Q Tell me, Mr. Edmonds, do you recognize this document?

2 A Yes, sir.

3 Q Let me trade with you.

4 MR. PORTER: Beg the Court's indulgence.

5 (Pause.)

6 BY MR. PORTER:

7 Q Tell me, Mr. Edmonds, do you also recognize this
8 document?

9 A Yes, sir.

10 Q Tell us what this is.

11 A After a meeting with Senior Assistant City Manager
12 Allison Baker, where he, basically, berated the entire
13 command staff about many of the problems I was offering to
14 fix that were apparent, but yet, nothing was being done, I
15 felt like something needed to be put in writing to both of
16 those. And again, in this document, I state I am willing to
17 take on any tasks to help solve the problem.

18 Q And was this document talking about the problems you
19 just referenced?

20 A Yes, sir.

21 Q What's the date of this e-mail?

22 A March 14th, 2015.

23 Q Is this an e-mail you wrote?

24 A Yes, sir.

25 MR. PORTER: Your Honor, at this time, I believe

1 without objection, I would like to move this into evidence.

2 MS. WILLIAMS: No objection.

3 THE COURT: Plaintiff's Exhibit 2 has been introduced
4 into evidence without objection.

5 (Plaintiff's Exhibit No. 2 marked and received into
6 evidence.)

7 BY MR. PORTER:

8 Q Who did you send this e-mail to?

9 A Deputy Chief Harry Tinsley and our chief, Aubrey
10 Jenkins.

11 Q What was done in response to that?

12 A Nothing.

13 Q This references the overtime use. Explain to us what
14 the problem is with overtime use in your mind.

15 A I want to be clear that overtime is good income for a
16 firefighter, but you reach a point where it becomes a safety
17 issue. As I said before, our schedule hours are 24 on and
18 48 off. But if you put three and four shifts of overtime in
19 a two-week pay period, now, you're working 48 on and 24 off.

20 Firefighters are not just firefighters anymore. They
21 are emergency responders, medical calls and everything in
22 between. And when you have firefighters leaving one station
23 and going to another and working 48 hours straight, that is
24 a safety issue.

25 Q Mr. Edmonds, I've handed you another document. Do you

1 recognize it?

2 A I do, yes, sir.

3 Q Tell us what it is.

4 A I was in charge of the health and safety program, but
5 the restricted -- which the restricted duty supposedly fell
6 under it, but as everyone in the fire department knew, Chief
7 Jenkins was the only person that was able to approve someone
8 for restricted duty and assign those people. There was one
9 person on restricted duty that had surpassed the City policy
10 allocated 180 days. That was a problem because the City
11 policy states you have to have the city manager's approval
12 to exceed 180 days.

13 It was brought to everybody's attention, but whenever I
14 attended a meeting with me, Chief Cothran and Chief Jenkins
15 and he asked openly why is somebody working past the 180
16 days? I don't think the city manager would approve us
17 breaking policy. I immediately went back to my office and
18 documented my position, the violations that were occurring
19 and, also, the actions that needed to be taken to rectify
20 the situation.

21 Q How many days had the gentleman been on --

22 A 302 as of this right here.

23 Q What was done in response to your e-mail?

24 A Nothing that I know of.

25 Q And this is an e-mail sent by you on what day?

1 A July 13th, 2015.

2 Q And you sent that who?

3 A Chief Tinsley and Chief Jenkins.

4 MR. PORTER: Your Honor, I believe without objection,
5 I'd like to move this in as Plaintiff's Exhibit 4.

6 MS. WILLIAMS: No objection.

7 THE COURT: Is this 4 or 3?

8 MR. PORTER: Exhibit 3, I'm sorry.

9 THE COURT: Plaintiff's Exhibit 3 is moved into
10 evidence without objection.

11 (Plaintiff's Exhibit No. 3 marked and received into
12 evidence.)

13 BY MR. PORTER:

14 Q So after you start writing these e-mails, how were
15 things for you at the fire department?

16 A Chief Jenkins was becoming increasingly distant to me.
17 And as far as the rest of the staff, it was kind of
18 tumultuous at best.

19 Q You say increasingly distant, tell us what you mean by
20 that.

21 A It's hard to say whenever you've known somebody for as
22 long as I had known him, 25 years, but you could tell that
23 the relationship was not as it was and it was eroding. And
24 I don't know if it was just all the pressure that was going
25 on in the fire department or me or a combination of both,

1 but I could just feel that there was an erosion in Chief
2 Jenkins and I's relationship at that time.

3 Q Do you recognize this document?

4 A Yes, sir.

5 Q What is it?

6 A Throughout all of this, I had been pursuing multiple
7 educational opportunities and using my own time and own
8 money. But one of them was the EFO, the executive fire
9 officer position that is held at the National Fire Academy.
10 It's the pinnacle of most any fire chief's or potentially
11 chief officer's career. And I was pursuing it.

12 But to do that, you have to have the fire chief's both
13 endorsement and then agreement that he will support you,
14 because it's a four-year process. There was one other
15 person in the fire department that I knew was pursuing the
16 same thing.

17 And what this is -- the e-mail chain is, basically, me
18 justifying why I copied I think then Division Chief Mark
19 Wright in the e-mail where I was asking if I could do it.

20 Q What's the date of this e-mail chain?

21 A September 10th, 2015.

22 Q And this e-mail chain involves who?

23 A Aubrey Jenkins and Harry Tinsley.

24 MR. PORTER: Your Honor, at this time, I'd like to move
25 this into evidence, I believe without objection, as

1 Plaintiff's Exhibit 4.

2 THE COURT: Ms. Williams.

3 MS. WILLIAMS: No objection.

4 THE COURT: Plaintiff's Exhibit 4 is introduced into
5 evidence without objection.

6 (Plaintiff's Exhibit No. 4 marked and received into
7 evidence.)

8 BY MR. PORTER:

9 Q So what are you asking for in Exhibit 4?

10 A The program, as I said, is over four years. There's
11 much to do remotely, obviously, throughout the four years.
12 You know, with the digital age, you can do plenty remotely.
13 But each year, you're asked to attend onsite for two weeks
14 at the National Fire Academy to do onsite work, network with
15 the other chief officers and share what you're done
16 throughout your remote working period.

17 So what I needed is, I need, again, both his
18 endorsement to attend the program, but, also, with my
19 assurance that I would work remotely and maintain all
20 responsibilities I possibly could remotely, I need him to
21 allow me to use class time during those two weeks, which the
22 class time was granted prevalently.

23 Q And why was Mark Wright included on this e-mail?

24 A Because he is the one other candidate I know that was
25 pursuing the EFO certification.

1 Q Read to us Aubrey Jenkins' response to you when you
2 sent him this original e-mail?

3 A Why am I being questioned in an e-mail with my
4 subordinates being copied? I am quite aware of how we
5 operate. I believe it would have been best served to
6 discuss this with me.

7 Q What did you do or say in reply?

8 A My replying e-mail was, As a professional courtesy and
9 with the approval of Chief Wright, I felt it honorable for
10 me to CC him due to the details pertaining to him contained
11 in the e-mail as well as the potential impact to him. As
12 for Chief Helms, I felt it beneficial for the professional
13 services division to be included in a request to pursue an
14 endeavor of professional development. My apologies for
15 questioning you while copying subordinates.

16 And furthermore, if it wasn't that day, it was the next
17 time I saw Chief Jenkins, I got to him face-to-face and I
18 apologized because I knew I had rubbed him the wrong way.
19 But then I said, you said we could talk face-to-face, can we
20 please go out to lunch or have coffee or something so I can
21 discuss it.

22 Q In your experience at the fire department for several
23 decades, is granting class time abnormal?

24 A No, it was not abnormal.

25 Q How were things between you and Chief Jenkins after

1 that e-mail exchange?

2 A Again, the same way. Minimal face-to-face contact. It
3 just was very cold.

4 Q What happened with the EFO program?

5 A I never got a chance to attend.

6 Q Do you recognize this document?

7 A I do.

8 Q Can you tell us what this is?

9 A What this is, as I alluded to earlier, everybody knew I
10 liked to drink coffee and I just -- Chief Jenkins, every
11 time I called him, didn't have time for lunch, didn't have
12 time for coffee. And this is me sending an e-mail with it
13 the subject line just trying to get him to respond. Because
14 I think the first of July was whenever I needed to attend
15 the school and I needed -- the deadline for approval was
16 approaching.

17 Q And what was the date of this e-mail?

18 A March 10th, 2016.

19 Q So if I understood your testimony, you were asking him
20 for lunch or coffee to talk about the EFO program?

21 A Yes, sir.

22 MR. PORTER: Your Honor, I believe at this time without
23 objection, I would like to introduce this as Exhibit 5.

24 MS. WILLIAMS: No objection.

25 THE COURT: Plaintiff's Exhibit 5 is introduced into

1 evidence without objection.

2 (Plaintiff's Exhibit No. 5 marked and received into
3 evidence.)

4 BY MR. PORTER:

5 Q What was the fire chief's response to your invitation?

6 A We never had lunch or coffee.

7 Q Let's circle back around to Exhibit 1, I think you told
8 us some of this, but who was Teresa Wilson?

9 A City manager.

10 Q And what exactly was going on in the fire department,
11 and you can be general with this, that caused the need for
12 this survey in March of 2016?

13 A Other than the attrition problems, the lack of
14 staffing, there were a couple of very salacious events in
15 the fire stations that were dangerous and also showed zero
16 leadership, lack of leadership. And they were in the public
17 eye and I believe that induced this survey.

18 Q You mentioned attrition, what you mean by that is
19 people leaving the fire department?

20 A Yes, sir.

21 Q Who was the group that conducted the survey?

22 A Stewart & Associates.

23 Q Were you responsible for any leadership problems at
24 issue? Any of the problems that caused this survey to take
25 place in your mind?

1 A No, sir, I don't believe so.

2 Q Do you think Chief Jenkins was responsible for any of
3 the leadership problems?

4 A Yes, sir.

5 Q Now, you mentioned anonymity, why did that matter to
6 you?

7 A Again, because I knew what I had to say. If I told the
8 truth, it wasn't going to shed a good light on Chief
9 Jenkins, Chief Tinsley and the command staff as a whole.

10 Q Did you believe the statements about confidentiality
11 and anonymity?

12 A Yes, sir, I sure did. Yes, sir.

13 Q Tell me about your meeting with the surveyor.

14 A I was scheduled to go second that day after Deputy
15 Chief Tinsley. And I was so apprehensive about going and
16 prayed so much the night before. My wife told me to just
17 tell the truth, you know, just tell the truth. And that's
18 what I did. I was consistent with what I had said up to
19 that point and I told the truth.

20 Q Well, if you had brought this up before and you were
21 still there, what were you worried about?

22 A I felt like things were getting very volatile at the
23 fire department, especially with the issues in the fire
24 stations. And now this is a third party coming in, so
25 that's raising it to another level.

1 Q I'm going to hand you a document that I handed you
2 before and ask you again for the record have you seen this
3 document before?

4 A Yes, sir.

5 Q And tell us what this is.

6 A As I said, the morning of the interview with Liz
7 Stewart, I was the second to go in. I went in and she had a
8 sign-in sheet. And Chief Tinsley had signed in and
9 completed, obviously. I went to sign in, but George Adams'
10 name was second on the list. I said, My name's not up here.
11 She said, Just strike his name out and write your name in.
12 I didn't think nothing of it at the time. I went ahead and
13 was very candid with Ms. Stewart.

14 Later that day, I had -- and when I left the meeting,
15 Mike Cothran, who I knew was after me scheduled, he was in
16 the parking lot and Chief Adams was in the parking lot. We
17 had exchanged pleasantries and I went on about my business
18 until lunch. Mike and I had agreed to meet for lunch and I
19 knew I had a 1:30 meeting with George Adams that afternoon.
20 I went to lunch and I made my meeting with Chief Adams at
21 1:30.

22 And I walked in and Chief Adams, not confrontational,
23 just --

24 MS. THYE: Objection, Your Honor. I'm renewing the
25 objection he's going to get into hearsay with what --

1 THE COURT: I note your objection. The objection is
2 overruled.

3 MS. THYE: Thank you, Your Honor.

4 THE WITNESS: So I attended my meeting with Chief Adams
5 and he promptly said, again, whimsically, but he said, you
6 know, she said the guy before me had a lot to say. And I
7 immediately said, Chief Cothran? Because Chief Cothran was
8 between me and Chief Adams. And she said, No -- he said,
9 No, you, you had a lot to say. A lot of good information,
10 but a lot of it. And my heart jumped out of my chest,
11 jumped out of my chest because I knew if Chief Adams knew,
12 Chief Jenkins would soon know.

13 BY MR. PORTER:

14 Q Were George Adams and Chief Jenkins close?

15 A Yes, sir.

16 Q So just so we get the document down, this is an e-mail
17 you sent about that to whom?

18 A Yes. I completed my work that day and I could not dare
19 drive home with this praying on my mind, so I sat down and
20 wrote an e-mail to City Manager Wilson and tried to give her
21 as detailed information that had transpired that day to show
22 her that I felt that her promise of confidentiality had been
23 breached.

24 MR. PORTER: Your Honor, at this time, I would like to
25 move this document into evidence as Plaintiff's Exhibit 6.

1 MS. THYE: Previous objection.

2 THE COURT: And I will note the objection to that
3 particular portion.

4 MS. THYE: Thank you, Your Honor.

5 THE COURT: Plaintiff's Exhibit 6 moved into evidence
6 over objection of the Defendant.

7 (Plaintiff's Exhibit No. 6 marked and received into
8 evidence.)

9 BY MR. PORTER:

10 Q What was the city manager's response?

11 A May I read it?

12 Q Yes, sir.

13 A Chief Edmonds, I truly value your insight perspective
14 and willingness to be open with your concerns during this
15 process. I take it very seriously and will do all I can to
16 maintain the integrity and confidentiality of the protocol
17 we have established. I look forward to talking with you
18 soon. Try not to worry. Easter blessings to you and your
19 family.

20 Q Did you believe her?

21 A Yes, sir.

22 Q Were you relying on this in the coming weeks and
23 months?

24 A Yes, sir.

25 Q What's the next you heard of this situation?

1 A When I was called to a meeting in Allison Baker's
2 office.

3 Q Did any personnel changes happen in between you being
4 called to Allison Baker's office and the survey?

5 A Yes, sir. Deputy Chief Tinsley was removed and
6 transferred and promoted.

7 Q Was he taken out of the fire department?

8 A Yes, sir.

9 Q Before we get into your talk with Senior Assistant
10 Manager Baker, let me ask you about this document. Do you
11 recognize it?

12 A I do.

13 Q Tell us what it is.

14 A Had a lot of irons in the fire. And at this time, I
15 was still pursuing the executive fire officer school that
16 was imminent in July. And in an effort, while I was asking
17 for endorsement and support, I was trying to show what all I
18 had done on my own time to improve myself in the department.

19 Q What response did you get from this?

20 A Nothing.

21 MR. PORTER: Your Honor, at this time, I'd like to move
22 this e-mail dated 4/6/16 into evidence as Plaintiff's
23 Exhibit 7, I believe without objection.

24 THE COURT: Ms. Williams?

25 MS. WILLIAMS: No objection.

1 THE COURT: Plaintiff's Exhibit 7 is introduced into
2 evidence without objection.

3 (Plaintiff's Exhibit No. 7 marked and received into
4 evidence.)

5 BY MR. PORTER:

6 Q How was your's and Chief's relationship at this time?

7 A It was still stagnant.

8 Q Let's move onto the Allison Baker meeting. Do you
9 recognize the document I have just handed you?

10 A Yes, sir.

11 Q And what is it?

12 A Well, during the meeting with Allison Baker, as I had
13 done previously with every other meeting I had had, I was
14 consistent and truthful and I shared with him everything I
15 had shared with everybody else. Never shared documentation
16 until asked for it. He asked for it. So this is me going
17 back to the office on that day and forwarding him the
18 documentation that he requested.

19 Q So was this e-mail after your meeting?

20 A Yes, sir.

21 MR. PORTER: Your Honor, at this time, I believe
22 without objection, I'd like to move that this e-mail dated
23 6/2/16 introduced into evidence as Plaintiff's Exhibit 8.

24 MS. WILLIAMS: No objection.

25 THE COURT: Plaintiff's Exhibit 8 is into evidence

1 without objection.

2 (Plaintiff's Exhibit No. 8 marked and admitted into
3 evidence.)

4 BY MR. PORTER:

5 Q How was Exhibit 8 marked?

6 A Are you referring to the sensitivity of it?

7 Q Yes, sir.

8 A Confidential.

9 Q Tell us, to the extent you haven't already, about your
10 meeting with Senior Assistant City Manager Allison Baker.

11 A He asked many of the questions that Liz Stewart asked
12 and I answered them truthfully and consistently. He even
13 thanked me at the end for my candor. That's a quote.

14 Q And the date of the meeting, just so we have a
15 timeline, what was that?

16 A June 2nd, 2016.

17 Q What happened next after your meeting and this e-mail?

18 A July 5th, 2016, I was called into Aubrey Jenkins'
19 office for an unannounced meeting.

20 Q And what happened at that meeting?

21 A I sat down and Chief Jenkins said, Why would you share
22 a document with my supervisor marked confidential that you
23 sent to me? And I said, Because he asked for it. Should I
24 have lied? And he said, Be quiet. This is my meeting. He
25 said, You've made a lot of accusations in this letter. And

1 he leaned forward and said something I'll never forget. He
2 said, Do you know how powerful a man I am in this town? And
3 I said, Chief, I feel like I'm being targeted. And that sat
4 him back and he actually kind of grinned and said,
5 Everything is going to be all right. And I asked to be
6 excused -- or dismissed and that was it.

7 Q Was everything all right?

8 A No, that was the demise of our relationship.

9 Q Tell us about that.

10 A There was no face-to-face contact after that, seems
11 like. The only way I could get in touch with him is by
12 phone. He would always answer his phone. And there were
13 meetings being held during that year that was specifically
14 within my realm of responsibility, but I wasn't a part of
15 them.

16 Q Now, your last day working at the fire department is in
17 July of the next year, correct?

18 A July 5th, the same day.

19 Q Was there any change in your relationship -- and I feel
20 like you've answered this. Did your relationship change
21 with Chief Jenkins in between your meeting on July 5th,
22 2016, and July 5th, 2017?

23 A Yes, sir. Yes, sir. There was no face-to-face
24 meetings whatsoever. Like I said, the only contact I really
25 could assure myself if I wanted to get Chief Jenkins' input

1 or give him an update on anything I was doing would be by
2 phone. And he would tell me I was doing a good job by
3 phone. He would say --

4 Q What sort of things would he tell you?

5 A He always told me -- I'd always say thank you -- I'm
6 doing my best, Chief, thank you for the opportunity. And
7 he'd say, no, no, no, thank you. You're not doing your
8 best, you're like the Nike switch, you just do it. He
9 always told me that and I was so proud of that. That
10 assured me that everything was going to be all right, even
11 though I felt -- and that was speaking professionally. I
12 really didn't think our personal relationship would ever be
13 salvaged, but, at least, I'm being a loyal assistant chief
14 and doing what I'm supposed to do.

15 Q Do you recognize the document I just handed you, sir?

16 A Yes, sir.

17 Q What is it?

18 A There was a guy named Ron Aiken, who had -- it was, I
19 guess, a consumer advocate blog where he was like -- he was
20 a whistleblower. And this article is specific to the fire
21 department where he, unfortunately, tries to correlate the
22 death of Ms. Henderson --

23 MR. THYE: Objection, Your Honor. This is probably the
24 matter we need to take up.

25 THE COURT: Ladies and gentlemen, this is an

1 appropriate time to take a break. We've been at it for
2 almost an hour. We'll take a 15-minute break. We need to
3 take up some issues outside of your presence.

4 I remind you again do not discuss the case. Anything
5 you've heard so far, don't discuss it among yourselves or
6 anything else. Talk about anything else, but don't discuss
7 this case at all. Don't be using your electronic devices to
8 try to find any information about this matter.

9 So with that, I'm going to allow you to go back to your
10 jury.

11 Everyone remain seated while the jury is excused.

12 (WHEREUPON, the jury exits the courtroom at 3:53 p.m.)

13 THE COURT: All right. I'll hear y'all on your
14 objection.

15 MR. THYE: Thank you, Your Honor. Your Honor,
16 unfortunately, it's hard to unring the bell once it's out
17 there. And I'm not sure whether the Court would want Mr.
18 Edmonds to proffer the testimony that you're about to elicit
19 about the authentication or the foundation for the document
20 and then determine whether or not it's admissible. I
21 hesitate to let him do that on the front end because then I
22 can't put the bobcat back in the sack once it's out there.
23 But it would assist the Court to have him sort of go through
24 --

25 THE COURT: Let me ask, in a general sense, what are

1 you intending to do with what you have -- I assume this is
2 going to be Plaintiff's Exhibit No. 9.

3 MR. PORTER: Plaintiff's 9, and 10 is an updated
4 version. I'm going to ask him -- A, I'm going to lay a
5 foundation, how he came to have the document. Then it's
6 going to be about a 10-question testimony, what is this
7 document, what did this article say you were doing? And
8 there were three key things, the glove thing, the unethical
9 relationship, being responsible for the facilities'
10 disrepair and lying with the insurance number. And as a
11 result of that, he's told in his termination that he missed
12 -- the glove thing is cited as a cause for his termination
13 in the wake of this article, I think, less than two weeks
14 later.

15 THE COURT: All right. Proffer your testimony. Let me
16 hear how you intend to use it.

17 BY MR. PORTER:

18 Q Mr. Edmonds, I think you told me you recognized this
19 document. Can you find the date on this document?

20 A It's June 19th of 2017.

21 Q Is that, perhaps, 19-6-17?

22 A Yes, sir.

23 Q European dating?

24 A It ain't American.

25 Q Does June 19th, 2017 sound correct?

1 A Yes, sir.

2 Q Does this document have a hyperlink on the bottom?

3 A It does.

4 Q A website for this to be pulled from?

5 A Yes, sir.

6 Q Did you view this document on a computer?

7 A On my phone.

8 Q How does this article implicate you precisely?

9 A It attempted to correlate the temporary closing of a
10 fire station to be the cause of a fatal fire where Ms.
11 Henderson died. It says that a person that holds my
12 position engages in kickbacks from vendors. It alleges that
13 I camp with the owner of the company that sells us the
14 gloves. And it alleges that I falsified our ISO reporting
15 data, which would be federal insurance fraud.

16 Q I've handed you another document. Do you recognize
17 this document?

18 A I believe it's the same with maybe one paragraph
19 different.

20 Q How did you come to have this article?

21 A The morning that it -- I guess it was the morning that
22 it came out. I was getting ready for work and I got a call
23 from a colleague saying, Have you seen Ron Aiken's article?
24 I said, No, I don't deal with that. And he says that, you
25 know, you're camping with Seth, Seth Newton. And I'm like,

1 What? Send me the article. And he sent me the article on
2 my phone and that's the article. I read it --

3 THE COURT: Now, which article -- just for my
4 clarification, are we talking about Exhibit 10 now?

5 MR. PORTER: I've jumped to 10 for efficiency.

6 THE COURT: Okay. Go ahead.

7 THE WITNESS: And if I may, Your Honor, I have never
8 seen --

9 THE COURT: You talk to him, not me.

10 THE WITNESS: The only one I ever read was the one that
11 said I went camping and there were pictures of me and Seth
12 Newton camping. Because that's all I heard all that day.

13 BY MR. PORTER:

14 Q Now, with respect to Ron Aiken, do you know, just so we
15 can verify, do you know if he was formerly a reporter at a
16 news station?

17 A I have no idea. The name sounds familiar, but I don't
18 know.

19 MR. PORTER: And then at that point, I would move into
20 whether or not he did anything wrong with respect to the
21 gloves, the facilities, et cetera. And I can continue
22 proffering if you would like.

23 THE COURT: Let me ask Ms. Williams.

24 MS. WILLIAMS: Thank you, Your Honor. You want me to
25 argue or you want me to cross?

1 THE COURT: This is your opportunity to cross-examine
2 him.

3 CROSS-EXAMINATION

4 BY MS. WILLIAMS:

5 Q Mr. Edmonds, you just testified you don't know who Ron
6 Aiken is; is that correct?

7 A No, that's not correct.

8 Q So you don't know who he is?

9 A I know who he is. I testified that he wasn't a news
10 reporter.

11 Q He wasn't a news reporter, okay. Who do you understand
12 him to be?

13 A Somebody who published a blog that was well read
14 throughout our fire department.

15 Q So just somebody who publishes information on the
16 internet; is that correct?

17 A That's correct.

18 Q And the only one of these two that you read was the
19 second one, the second blog, is that what you just testified
20 to?

21 A The only one I read was the one sent to me the morning
22 it was published. I don't know if it was first or second.

23 Q Okay. And do you know which date it was sent to you or
24 when it was sent to you?

25 A I can't answer that accurately. I have the e-mail, I

1 can get that for you.

2 Q So you did not read the first blog; is that correct?
3 You were told about the second one and that's the one you
4 saw --

5 A I don't know which is first and which is second. The
6 one that I read --

7 Q See, I don't either.

8 A The one that was sent to me and the one that seemed to
9 be well known throughout the fire department was the one
10 that alluded to me camping with Seth Newton.

11 Q Okay. And I think for our purposes, that is being
12 proffered as No. 10, so I'm just going to refer to that.
13 You read the whole article?

14 A Yes, I did.

15 Q Do you know who the source was that was listed by Mr.
16 Aiken?

17 A No, ma'am.

18 Q Was it you?

19 A No, ma'am.

20 Q Is there any mention of your name in this article?

21 A No, ma'am.

22 Q In fact, is there a picture of you in this article?

23 A No, ma'am.

24 Q Who's the picture of in this article?

25 A Aubrey Jenkins and Ms. Henderson.

1 Q And by your testimony, the article makes mention of Ms.
2 Henderson's death and trying to connect that to the damage
3 at the fire stations. Is that your understanding?

4 A Trying to connect it to the temporary closing of the
5 fire station, yes, ma'am.

6 MS. WILLIAMS: I don't have any other questions.

7 THE COURT: Any redirect as far as the proffer?

8 MR. PORTER: As far as the proffer, no, Your Honor.

9 THE COURT: Thank you.

10 Ms. Williams, I'll be glad to hear you on the
11 objection.

12 MS. THYE: I'm actually going to argue that, if that's
13 okay.

14 THE COURT: I'm sorry.

15 MS. THYE: That's fine.

16 You know, same objection as before, this is -- this
17 article, both of these articles clearly are hearsay. Not
18 only the article themselves is sort of level one hearsay,
19 but the source and the statements attributed to the source
20 in those articles is hearsay, sort of level two hearsay, if
21 you will. Not only is it the instance that it was published
22 at all, but also that there was a source attributed in that
23 article as being someone that now the Plaintiff is trying to
24 say clearly links me to all of these things.

25 There's no mention of Mr. Edmonds in this article. The

1 only -- it is unflattering for the fire department, but,
2 quite frankly, there's a picture of Chief Jenkins. It
3 references a chief and it shows a picture of him. So it's
4 not --

5 You know, Mr. Porter had argued earlier that it was not
6 offered for the truth of the matter asserted therein.
7 However, if you look at this case as a whole in terms of
8 what he has to prove for a defamation action that there was
9 a false statement, it's different than excusing a hearsay
10 exception.

11 While it may be -- you know, it may be the case he has
12 to prove a false statement, so, therefore, this article is
13 relevant to that, it does not get around the fact that it
14 still contains hearsay and it's still a hearsay exception
15 under the typical rules.

16 So you look on back to what I started out earlier, if
17 you go back to is it relevant, is it authenticated? He
18 can't authenticate the document. He's not the one who
19 published it. He's going to say I read a document that
20 references Seth Newton and I camping all the time.

21 I'm not sure what the document he read actually was at
22 the time he read it. This is purported to be that document,
23 but there's no indication given the nature of the electronic
24 information that we're talking about. Again, this is not a
25 static newsprint that we can refer to that is set.

1 Then you look at whether or not this is the best
2 evidence of that. You know, is this print-off the best
3 evidence of what it is that Mr. Edmonds says he looked at
4 the morning that he looked at it that everybody supposedly
5 referenced? Again, it goes to the problems of electronic
6 information and news articles as opposed to static print.
7 We just don't have the trustworthiness that this is
8 necessarily what he saw or what was on the blog the morning
9 that he saw it.

10 You then look at whether or not -- and in addition to
11 the hearsay, it occurs to me that what they're trying to use
12 it for in bringing up the True Dent Henderson death, which
13 was tragic, is to try to lump that all together. And I'm
14 not sure Rule 403 doesn't keep it out for its prejudicial
15 value over the probative effect. That, quite frankly, the
16 fact that somebody died as a result of this fire station
17 being closed, that's not an issue in this case. That is not
18 to be decided in this particular case of Mr. Edmonds against
19 us. It is something that he'd like to rely on as that might
20 have been a reason I was separated from employment, that
21 might have been a reason that they separated me, but that's
22 not an issue in the causes of action that he has here.

23 It occurs to me listening to him argue about the
24 Henderson that that is also a reason to keep this particular
25 blog out or, at least, the parts that reference the True

1 Dent Henderson death and that.

2 So I think that, you know, the difficulty with
3 redacting something like this, allowing it to come in is it
4 would be difficult to redact all of the pieces. You know,
5 the truth that they have to show for the defamation action
6 is that a statement was published. They have to show that.

7 So maybe the truth isn't the quote from the source.
8 Maybe the truth is this -- at least, in the article when it
9 talks about a whistleblower affiliated with the -- and I can
10 find the exact comment. It was a whistleblower within the
11 Columbia Fire Department who spoke exclusively to Quorum for
12 this story and whose information Quorum vetted through
13 multiple sources inside and outside the department.

14 While that may be level one hearsay, which is just the
15 blog post and not attributed to somebody, that clearly is
16 hearsay as well. Mr. Aiken is now representing that
17 somebody contacted him and made these statements to him and
18 he vetted those inside and outside the fire department.

19 So I think we have so many pieces of hearsay in this
20 document, coupled with all the difficulties they have try to
21 lay the foundation and show this is what it purports to be
22 that I think at this point, you know, an analysis under 403
23 is certainly appropriate.

24 THE COURT: Mr. Porter.

25 MR. PORTER: Yes, Your Honor, and I'll be as brief as

1 possible.

2 First off, there's three different arguments that were
3 raised. The idea of this goes to the core of one of the
4 elements actually cuts against the City. One of the other
5 cases cited at Page 18 of the pretrial brief, the
6 Kepner-Tregoe, Inc. case, 12 F.3d 527, which is cited by the
7 South Carolina Court of Appeals at 413 S.C. 58, it's a Fifth
8 Circuit case. But it notes that documents or materials of
9 independent legal significance are not hearsay. So when you
10 say this is going to an element off issue, that can become a
11 document of independent legal significance.

12 Exhibit 10 is self-authenticating. It's got a
13 hyperlink. The new South Carolina --

14 THE COURT: Well, Exhibit 10 that's in here has nothing
15 on it. There's no date, there's no hyperlink, there's
16 nothing.

17 MR. PORTER: I meant 9. I did mean to say 9 there.
18 Exhibit 9 is self-authenticating. It's got a hyperlink.
19 The new amendments to Rule 902, Federal Rules of Evidence,
20 have noted that hyperlink documents are self-authenticating.
21 However, when we look at the fact -- if you look at Exhibit
22 9, this is not merely a blogger. This is a reporter who's
23 advertising. You see he adds on there --

24 THE COURT: How do we know he's a reporter? I mean,
25 who's Ron Aiken? There's no testimony about who he is.

1 MR. PORTER: Certainly. He's a blog writer --

2 THE COURT: I mean, there's no evidence of who Ron
3 Aiken is.

4 MR. PORTER: Certainly, but I don't know that that's
5 integral to the case.

6 THE COURT: Well, is it not integral in being able to
7 authenticate it? Just the fact that it's got a hyperlink,
8 does that automatically authenticate the document?

9 MR. PORTER: I believe it is self-authenticating, yes,
10 sir. But as far as like being able to identify the
11 reporter, you know, the cases I cited on brief when we talk
12 about using stock reports and newspaper articles, I don't
13 think the Court imposes a requirement to establish who Joe
14 Smith is who wrote the article. All that matters is that
15 the article --

16 THE COURT: Explain to me -- and this is in my
17 ignorance. Explain to me what a hyperlink is and how that
18 makes a document to be self-authenticating.

19 MR. PORTER: Again, I'm using the federal rules --

20 THE COURT: No, I'm concerned about just practically.

21 MR. PORTER: The federal rules say that hyperlink on
22 the bottom, if I'm reading 902, Paragraph 13 --

23 THE COURT: Now, we don't have that rule in South
24 Carolina yet?

25 MR. PORTER: Not yet, correct. They say that link on

1 the bottom and the date on the top, the fact that you can
2 show it was pulled on a certain day and clip that into your
3 internet browser if you've got it set to that date, you can
4 pull that up. And so that becomes a self-authenticating
5 document if it's got the http --

6 THE COURT: Well, there's no question then that the
7 document was on the internet. I guess what I'm trying to --
8 I can't get over the next -- how does that make it an
9 authenticate document? It means that it was authentically
10 on the internet, but that seems to fall sort of short of
11 even authenticity.

12 MR. PORTER: Well, I think that gets us there with
13 authenticity. Perhaps, the hearsay would be the next
14 problem, but I just don't think it's hearsay because it's
15 not offered for the truth of the matter asserted. It's
16 offered to show what happened as a result. And it's offered
17 to show the context within which Mr. Edmonds was terminated.

18 Mr. Edmonds is not the only person who will testify
19 about this article. If Mr. Jenkins is called, I'll ask him
20 about the article. He acknowledged that he was concerned
21 about the article. Two other battalion chiefs will also
22 testify about their knowledge of the article. This is not
23 something that kind of happened in a vacuum, this was big
24 news, as Mr. Edmonds testified, at the fire department. And
25 we're not really introducing it to say that what it says is

1 true. In fact, the very opposite, we claim that what it
2 says about Mr. Edmonds' position is false.

3 Did I answer your question?

4 THE COURT: Yeah. I'm still trying to figure out if
5 his name, his picture is not in the article, where is the
6 defamation to him?

7 MR. PORTER: It refers to the assistant chief who's
8 over purchasing and the assistant chief who was over these
9 gloves, this glove issue, which was Mr. Edmonds' position.
10 And those same witnesses will corroborate that they knew
11 this was talking about Edmonds.

12 And for authority there, so I'm not just kind of
13 spouting, Tyler V. Mack Stores recognizes defamation by act.
14 And this is integral to defamation by act. Tyler V. Mack
15 Stores was a manager and an assistant manager both accused
16 of stealing. The manager failed the polygraph. They fired
17 both the manager and the assistant manager, who refused to
18 take the poly, had not failed the poly, at the same time.
19 The Court finds the assistant manager may have an actionable
20 claim for defamation by act. So that's where we recognize
21 this defamation by act.

22 And what it, basically, is if you've got a situation
23 like this where the rumor mill is buzzing that oh, my
24 goodness, this article just came out accusing you of
25 everything under the sun and then you fire them, knowing

1 that the grounds are not accurate grounds, that that creates
2 an actual defamatory inference not only under Tyler, but
3 under Eubanks V. Smith, which recognizes defamation by
4 insinuation.

5 THE COURT: All right. Anything else as far as these
6 two documents?

7 MR. PORTER: As far as these two documents, the only
8 thing I would point to in our present rule is 902(6) notes
9 that newspaper articles are self-authenticating. I think,
10 ultimately, when this issue was decided, a reporter's
11 article -- which the Court can take judicial notice that
12 this gentleman was a reporter, a reporter's article is going
13 to be a self-authenticating document even if it's not in
14 traditional means.

15 THE COURT: And again, just educate me on, what do we
16 call the magic code at the bottom? What do we call it?

17 MR. PORTER: The hyperlink.

18 THE COURT: The hyperlink. And just again, you need to
19 educate the Judge. Is there anything that's entered on the
20 internet that does not have a hyperlink?

21 MR. PORTER: I don't think so.

22 THE COURT: Then would it be fair to say then the
23 argument that everything on the internet is
24 self-authenticating?

25 MR. PORTER: From an authentication perspective, I

1 would say so, Your Honor. Like a newspaper article, it's
2 authenticate. The question then becomes your other rules of
3 evidence.

4 THE COURT: Well, we still haven't gotten to the
5 admissibility yet, I understand that.

6 Anything else?

7 MR. PORTER: No, sir.

8 THE COURT: Ms. Thye?

9 MS. THYE: And I just think the best evidence is that
10 we've got something that's fluid. The fact that we've got
11 two versions of the same article, one has a date clearly on
12 it and the other one doesn't have a date on it, doesn't have
13 a hyperlink, doesn't have anything like that on it.

14 So you've got multiple iterations of the same writing
15 that now the jury is going to be asked to impute the
16 statements from one of those writings, or maybe both of
17 those writings onto the City and onto what they purport to
18 be and the authentication. He list print materials, but our
19 rules still -- and I mean, not until we, I guess, adopt the
20 federal rule, it says newspapers and periodicals. It says
21 printed materials.

22 And I think that goes to the argument that static --
23 you know, printed materials, once the news copy comes out
24 and it is set, then we have one document. While it's still
25 on the internet, with just a couple of keystrokes, it can be

1 adulterated, it can be changed, it can be edited, it can be
2 updated, as No. 10 updates No. 9. You know, we've got two
3 documents here that purport to be the same thing.

4 I would point out that No. 9 also has comments. And I
5 believe that most of the cases that talk about any of that,
6 the comments certainly come out on the backside of it.
7 They're irrelevant to anything that's going on here. They
8 don't speak to any of that. But that's the type of stuff
9 that is still, you know, capable of being fluid.

10 And under those circumstances -- I guess, despite what
11 we would like the law to be and having the law catch up to
12 the technology that we have, we always have to fall back on
13 the rules of evidence in general. And this just is hearsay
14 in, at least, two layers in several places of the document,
15 that once it's out there, it's going to be impossible for
16 the jury to consider in ways that are appropriate.

17 THE COURT: All right. Thank you.

18 We'll take about 10 more minutes and I'll come back and
19 rule.

20 Hold on one more second. We have another question from
21 the jury.

22 Hello, I'm Juror No. 208. I worked with Lexington
23 Medical Center from 12:30 p.m. till 9:00 p.m. I'm here all
24 day and still have to go to work afterwards. So that's over
25 12 hours. I'm having a difficult time focusing. May I be

1 excused?

2 That's the question. I'll deal with that when I come
3 back, too.

4 (Short break.)

5 THE COURT: We need to deal with this question from
6 Juror 208. I think what I'm going to do -- I think what
7 we'll do is take a break here. I'm going to give some
8 instructions to the witness once the jury comes in and goes
9 out. I'm afraid with this particular jury if I let this
10 person be excused that we could possibly end up with less
11 than 12. We might end up with less than 12 anyway the way
12 these guys are going and the way they like to write notes.
13 But I will do everything I can to stem that.

14 So I'm going to bring the jury in and just state that I
15 got a note from Juror 208 needing some time -- I'm not
16 excusing Juror 208. I'm going to require that all jurors to
17 be back in the morning at 9:30. Then we'll address the
18 evidentiary issues.

19 Let's bring the jury in.

20 (WHEREUPON, the jury enters the courtroom at 4:40 p.m.)

21 THE BAILIFF: The jury is present, Judge.

22 THE COURT: Thank you.

23 Ladies and gentlemen of the jury, what we're going to
24 do is -- this has been a long day. I'm going to allow you
25 to leave, to go home.

1 There was a request by one of the jurors about their
2 work hours. I don't know how you work that out with your
3 employer, but you've been selected to serve as jurors and we
4 expect you to be with us until the conclusion of the case
5 unless there's an emergency.

6 However, with that, we're going to break now so you can
7 go home. And all of you need to be back at 9:30 in the
8 morning. Everybody on the jury panel, be back at 9:30 in
9 the morning and we'll resume the trial.

10 Now, trials are not exact science. We deal with
11 people. But I can assure that we may go until 5 o'clock.
12 We shouldn't go any later than 5:30 or so tomorrow.
13 Generally, we do everything we can to try to get you out of
14 here by 5 o'clock. However, you'll need to be back on
15 Thursday morning at 9:30. And we will go if we need to till
16 5 o'clock or so on Thursday. It's possible we could go into
17 Friday. We don't think that's going to take place, but
18 that's the nature of jury service. That's the nature of our
19 work. So if you need to make arrangements with your
20 employer, you need to do that. You can tell them that you
21 have been sworn as jurors in a particular case and you are
22 to be here.

23 Hopefully, y'all can get your rest tonight. Everybody
24 be back at 9:30 in the morning. Again, no discussion about
25 the case. You can grumble and complain about Judge Hall to

1 your friends and neighbors and whoever you're with, but
2 don't say anything about the case. Don't be doing any
3 research on the internet or look at any past articles. Your
4 decision has got to be based on what you see and hear in
5 this courtroom alone.

6 So with that, I'm going to allow you to leave. Be back
7 ready to go at 9:30 in the morning.

8 Everyone remain seated while this jury is excused.

9 (WHEREUPON, the jury exits the courtroom at 4:42 p.m.)

10 THE COURT: Mr. Edmonds, we're going to allow you to
11 step down. I need to remind you, though, that you are under
12 oath and you remain under oath, which means that you're not
13 to discuss your testimony that you've given today with
14 anyone, even your attorney. You're not to discuss any
15 potential testimony that you may give tomorrow with anyone,
16 even your attorney. You are under oath until you complete
17 your testimony. Do you understand that?

18 THE WITNESS: Yes, sir.

19 THE COURT: Thank you. You can step down.

20 (Witness steps down.

21 THE COURT: Let me address the -- what's been marked --
22 were they marked Plaintiff's Exhibit 9 and 10? Have they
23 been marked?

24 MR. PORTER: No, sir, not for identification.

25 THE COURT: Let's go ahead and have those marked.

1 (Plaintiff's Exhibit Nos. 9 and 10 marked for
2 identification.)

3 THE COURT: I believe what's been marked Plaintiff's
4 Exhibit 10 is what we've been referring to as the second
5 blog report. It has no hyperlink or date on that exhibit,
6 so I'm not going to allow Exhibit 10 into evidence.

7 On Exhibit 9, here's my inclination and I'm going to
8 think about it more overnight. It appears to the Court that
9 the only potential admissible relevant portion would be the
10 first paragraph under what's titled "Questionable Ethics".
11 And that states: It is one thing when an individual makes a
12 potentially unethical decision, such as a chief with
13 purchasing authority allegedly buying some \$60,000 worth of
14 new firefighting gloves that were not part of a rigorous
15 internal test of six different brands to choose the ones
16 best suited for the department. That situation, sources
17 tell Quorum, is the subject of an open internal
18 investigation.

19 I'm inclined to allow those two sentences in out of
20 that document; however, I'm also inclined to agree with Ms.
21 Thye that even if the rest of the document was admissible,
22 when you do a 403 analysis and weighing whether it's more
23 prejudicial than probative, that the bulk of that article is
24 really aimed at the death of Ms. True Dent Henderson and the
25 circumstances surrounding that, including personnel issues

1 within the department, other things that -- missing reports,
2 that the other parts of that Plaintiff's Exhibit 9 would be
3 more prejudicial than probative and I'm inclined to not let
4 any of that in; however, I am going to think about letting
5 in those two sentences.

6 Are we clear on where the Court stands, Ms. Thye?

7 MS. THYE: Yes, sir, Your Honor. Thank you.

8 THE COURT: And Mr. Porter?

9 MR. PORTER: Yes, Your Honor. And I'll bring in
10 tomorrow morning a redacted document in accordance to what
11 you just said.

12 THE COURT: Yeah, you've got to figure out who you're
13 going to do it. There's only one paragraph I'm going to let
14 in. But I still reserve final judgment on that. I'm going
15 to deal with that tonight.

16 MR. PORTER: Yes, Your Honor.

17 THE COURT: We're living in the age of internet, blogs
18 and whether we like it or not as judges, we have got to
19 learn to figure out how to deal with that. And much to my
20 chagrin, many of my other cohorts also don't know what to do
21 with them. So we'll figure that out in the morning.

22 Anything else for the day, Mr. Porter?

23 MR. PORTER: No, Your Honor.

24 THE COURT: Ms. Thye? Ms. Williams?

25 MS. THYE: No, Your Honor.

1 THE COURT: We'll be at ease until 9:30 and we hope
2 that all of our jurors show up tomorrow.

3 (Court was adjourned for the day to be reconvened on
4 Wednesday, February 20, 2019.)

5 Wednesday, February 20, 2019

6 THE COURT: Is Plaintiff ready to proceed?

7 MR. PORTER: We are, Your Honor.

8 THE COURT: Is Defense ready?

9 MS. WILLIAMS: Yes, Your Honor.

10 THE COURT: All right. Let me finish dealing with
11 Exhibits 9 and 10, I think that's where we ended yesterday.

12 Anything you want to say Mr. Porter in regards to the
13 admissibility of Exhibits 9 and 10?

14 MR. PORTER: As far as that goes, I think my arguments
15 are on the record. In my spite of my arguments, I find
16 while you have decided the compromise of the redacted
17 version, I will do my best to work through that if that is
18 ruled upon. I have an example for you to see. Ms. Thye
19 thought there were some things that I failed to redact, I
20 was supposed to redact one sentence. May I present that to
21 you?

22 THE COURT: Yeah, let me see what --

23 And while I'm looking at that, Ms. Thye, is there any
24 more you want to say as far as admissibility of Exhibit 9
25 and 10?

1 MS. THYE: No, Your Honor. It was just my
2 understanding when we left yesterday that that paragraph,
3 the first paragraph under the heading "Questionable Ethics",
4 there were only two sentences in that paragraph.

5 THE COURT: Let me deal with that right now, then.

6 To be sure that we're clear, I find that Exhibit 10,
7 which was the -- what was purported to be either an edited
8 blog of Exhibit 9. Exhibit 9 purports to be a blog post
9 from Whistleblower Quorum Columbia. And it does have a
10 hyperlink properly identifying it.

11 However, when I went through Exhibit 9, even though it
12 purportedly is authenticated through the hyperlink, I guess
13 there's no question that this is a blog or a copy of
14 something that came off a blog, I find that other than
15 paragraph -- a two-sentence paragraph listed under the
16 heading "Questionable Ethics", I will allow those two
17 sentences in. It appears that even though this document is
18 authenticated by the hyperlink, the reminder of the blog and
19 its comments appear to be commentary by the -- whoever the
20 writer is.

21 In fact, when you do a 403 analysis weighing whether
22 it's more prejudicial than probative, most of that blog is
23 concentrated around trying to show that problems within the
24 Columbia Fire Department led to the ultimate death of a Ms.
25 True Dent Henderson. I find that is not relevant to the

1 issues in this case and, also, that they would be more
2 prejudicial than probative. So the only thing I will let in
3 would be those two sentences.

4 So I don't know how you need to clear that up on that
5 one, Mr. Porter. You have a second paragraph included on
6 the redacted portion. If you'll look at what you have under
7 "Questionable Ethics" and you have -- what I intended to
8 allow in was those first two sentences -- in other words,
9 that first paragraph. The second paragraph, It's another
10 thing entirely when a decision of questionable ethical
11 judgment is issued by a senior staff member in an effort to
12 circumvent federal reporting criteria to improve the
13 department's insurance service office ISO rating, that is
14 exactly what the source alleged happened. That appears to
15 be commentary by the writer. I'm not going to allow that
16 in.

17 MR. PORTER: Your Honor, that was a mistake on my part.
18 What I would like to do is just use a Sharpie or permanent
19 marker to redact that.

20 THE COURT: As long as --

21 Ms. Thye, when you see that, if you're comfortable with
22 that.

23 MS. THYE: Your Honor, quite frankly, I would prefer
24 that we just cut that section out of those pages. That
25 document itself is almost five pages long. And if that

1 whole document goes back to the jury, the question in their
2 mind is going to be what are not allowed to see, not just
3 that sentence that they are allowed to see. Is there a way
4 we can just cut it and put it on a different sheet of paper,
5 make a copy of it?

6 THE COURT: Well, I don't have a problem with the cover
7 that he has on there and then a following page with those
8 two sentences. Whether --

9 MR. PORTER: I don't mind cutting out the other pages.

10 THE COURT: How long is it going to take you to do
11 that?

12 MR. PORTER: Two seconds.

13 THE COURT: Okay. Do that.

14 MR. PORTER: If we've got a stapler and a Sharpie, I
15 can make quick work.

16 THE COURT: Here's what you're going to have. You're
17 going to have one page with the cover and then you're going
18 to have another page that has two big old black boxes on it
19 and then another black --

20 Do you have an objection to it going in in that form?

21 MS. THYE: Can we get a photocopy made of that so that
22 you can't read through?

23 MR. PORTER: That's fine.

24 MS. THYE: I mean, I hate to be particular --

25 MR. PORTER: There's a copier right here.

1 THE COURT: All right. And let's look at it and make
2 sure it's all clean.

3 While we're cleaning that up -- there's nothing else to
4 be done as far as No. 9. No. 10, Exhibit 10 was, again, the
5 unable to prove -- you know, any way to authenticate it
6 other than the witness stating that he copied it off of the
7 internet. However, there's no identifying line or URL tag
8 on it at all and it appears to be a summary of what No. 9
9 was.

10 In actuality, there's additional language or changed
11 language on it that was not in the original No. 9. So
12 therefore, I find that one, Exhibit 10 is unable to be
13 properly authenticated. It does appear to contain
14 information that has been changed from No. 9 and I'm not
15 going to allow it to be introduced.

16 So are we ready to go with this witness now? Anything
17 else?

18 MR. PORTER: I think we are logistically, just make
19 sure it works with Your Honor. I'm going to hand the two
20 marked as identification back up and when I introduce this,
21 it will be Exhibit No. 11.

22 THE COURT: Are we ready to go?

23 MR. PORTER: Yes, sir.

24 THE COURT: I'm going to take a quick break. We'll be
25 at ease about 10 minutes.

1 (Short break.)

2 THE COURT: Let's bring the jury in.

3 (WHEREUPON, the jury enters the courtroom at 10:04
4 a.m.)

5 THE BAILIFF: The jury is seated, Your Honor.

6 THE COURT: Thank you.

7 The first alternate, who was the first alternate? If
8 you would move down to this front chair. You are no longer
9 an alternate. So you're free to sit in any of these three
10 rows as you see fit.

11 All right. Mr. Porter, it's your witness.

12 MR. PORTER: Thank you, Your Honor.

13 CONTINUED DIRECT EXAMINATION

14 BY MR. PORTER:

15 Q Michael, to refresh the jury where we left off, we were
16 talking about an article. I'm going to hand you a new
17 document and I'm going to ask you a few questions. First
18 and foremost, can you tell us what this document is? Right
19 now, I just want what it is and the date it came out.

20 A The title is "Whistleblower, Mass Resignations,
21 Crumbling Facilities, Fraudulent Reporting, Tarnished Fire
22 Department", and it's published on June 19th, 2017.

23 MR. PORTER: Your Honor, at this time, I'd like to move
24 this document into evidence as Exhibit 11.

25 THE COURT: Ms. Thye?

1 MS. THYE: We have no objection --

2 THE COURT: Lawyers approach.

3 (Bench conference.)

4 THE COURT: The Court -- this is Exhibit 11. The Court
5 has previously ruled that Exhibit 11 would be allowed into
6 evidence. I note the objections from the Defense, however,
7 Exhibit 11 is admitted into evidence.

8 (Plaintiff's Exhibit No. 11 marked and received into
9 evidence.)

10 BY MR. PORTER:

11 Q Mr. Edmonds, if you would, turn to the second page of
12 Exhibit 11.

13 A Yes, sir.

14 Q And read us what you see before you on that page.

15 A In embolden font: Questionable Ethics. It's one thing
16 when an individual makes a potential unethical decision,
17 such as a chief with purchasing authority allegedly buying
18 some \$60,000 worth of new firefighting gloves that were not
19 part of a rigorous internal test of six different brands to
20 choose the ones best suited for the department. That
21 situation, sources tell Quorum, is the subject of an open
22 internal investigation.

23 Q Who was the chief responsible for the purchase of the
24 Honeywell Super gloves?

25 A That would be me.

1 Q Tell us about the gloves. Was there anything wrong
2 with the purchasing process?

3 A No, sir. In fact, the Super glove, it's been stated
4 that they had standard sizes, which is true, but our female
5 firefighters were having a problem with glove fit. And the
6 Super glove at that time offered a cadet size, which was
7 shortened finger lengths. And that was a big plus for me,
8 also, being 1971. So to answer your question, no, there was
9 nothing wrong with the gloves or, in my mind, the process to
10 choose them.

11 Q Tell us about the process to choose them.

12 A We initiated a glove trial that was led by a couple of
13 battalion chiefs in the training division. They tried them.
14 They all endorsed it. I had written endorsement from all
15 the division chiefs, which would be the senior command for
16 the three shifts and the training chief. And my boss told
17 me to buy them. Everything was approved.

18 Q What company sells those gloves?

19 A Newton Fire Safety would sell those.

20 Q What was the nature of your relationship with Mr.
21 Newton?

22 A Strictly professional.

23 Q And were these gloves involved in a field test?

24 A Yes, sir.

25 Q Now, were they safe for firefighter use?

1 A Yes, sir.

2 Q What about the disclaimer on them?

3 A It was not unlike every disclaimer on every piece of
4 personal protective equipment we wear.

5 Q After this article comes out, what happened next?

6 A Throughout the day, I received dozens of calls and
7 texts and even more face-to-face questions about the
8 contents of what was in that article and, most importantly,
9 my boss read it. And I was, indeed, investigated by two
10 fire marshals, submitted a sworn statement, written
11 statement and asked for a polygraph test, but I was never
12 granted that.

13 Q You mentioned you were investigated. What department
14 conducted your investigation?

15 A It was an internal investigation led by Chief George
16 Adams.

17 Q First and foremost, what's the title page of this
18 document say?

19 A Columbia Fire Department Case Summary and Conclusion.

20 Q And have you seen documents like this before in your
21 time at the fire department?

22 A No, sir.

23 Q Have you seen this document?

24 A Not until this case.

25 Q On the second page, does it state what this is?

1 A It does, yes, sir.

2 Q Can you tell us what this is?

3 A It is a written report following the aforementioned
4 investigation on me. And I imagine it's to the fire chief.

5 Q And what date was this report completed?

6 A 5/30/17.

7 Q And who's the investigator who completed the report?

8 A It says Investigator Matthew Jenkins.

9 Q And does he work under the fire marshal?

10 A Yes, sir.

11 MR. PORTER: Your Honor, at this time, I believe
12 without objection, I'd like to move this into evidence as
13 Exhibit 12.

14 THE COURT: Ms. Williams? Ms. Thye?

15 MS. WILLIAMS: No objection, Your Honor.

16 THE COURT: Plaintiff's Exhibit 12 is introduced into
17 evidence without objection.

18 (Plaintiff's Exhibit No. 12 marked and received into
19 evidence.)

20 BY MR. PORTER:

21 Q If you'll turn to Page 3 of Exhibit 12 and read us the
22 first sentence of the bottom paragraph.

23 A Are we on the page that is titled Case
24 Summary/Timeline/Conclusion?

25 Q Yes, sir.

1 A And what would you like me to read, sir?

2 Q The paragraph at the bottom beginning "Everyone".

3 A Everyone I spoke to advised they had heard rumors that
4 Chief Edmonds and Seth Newton were camping buddies or there
5 is a picture of Chief Edmonds and Seth Newton at a family
6 outing or vacation or that Chief Edmonds must be getting
7 kickback since he purchases gloves from -- continue?

8 Q Yes.

9 A Purchases gloves from a vendor who wasn't even a part
10 of the glove trial. None of --

11 Q That's fine. Let's work our way back from there. Were
12 these gloves a part of the glove trial?

13 A Yes, sir.

14 Q Were you getting any sort of kickback from the Newton
15 Company?

16 A No, sir.

17 Q Were you camping buddies or friends outside of work?

18 A No, sir.

19 Q Turn to the very last page, if you will.

20 A (Witness complies.)

21 Q Read for us the first sentence.

22 A It is the findings of this investigation that there is
23 not significant evidence to indicate that the allegations
24 are true.

25 Q Now, it does go on that there were some issues with the

1 procurement process. Did you handle this procurement
2 process any differently than you had handled others
3 throughout your tenure?

4 A No, sir. This was even more rigorous than most.

5 Q So what did George Adams tell you about the
6 investigation?

7 A No one ever came to me. You submit these statements
8 and you're investigated. You know it's going on. You know
9 it's a very important deal, but there's never conclusion. I
10 never heard anything. And so, as we were assembling for one
11 command staff meeting one morning, I finally asked George, I
12 said, What's the result of the investigation on me? And he
13 said, You're okay. Everything is unfounded.

14 Q So what happened after that?

15 A July 5th, 2017.

16 Q Tell us about July 5th.

17 A As I did most every day prior to going to work -- it
18 was July 4th, but you go through your e-mail, you go through
19 your calender, you go through preparing for the next day.
20 And I saw I was invited to a meeting to Chief Jenkins'
21 office in the morning, first thing. I had no idea why,
22 nothing in the subject line, just be there.

23 Got to the office that morning, I think I even asked
24 Chief Helms, What's the meeting about? He said, I'm not
25 invited to no meeting. And it was about time for the

1 meeting, so I went to the Chief's office and I sat down and
2 there sat Chief Wells and Chief Jenkins and they shut the
3 door behind me.

4 He said, I'm going to have to request your resignation.
5 And I said, For what? He said, The facilities are -- the
6 stations are falling apart and this glove thing is the final
7 straw. I said, Chief, I don't maintain the stations. I
8 don't have any supervisory oversight over those technicians.
9 And as far as the glove trial, my boss told me to buy them.
10 You approved the purchase. And I went through an
11 investigation and everything was unfounded. He said, I've
12 made my decision.

13 So I slid something across the desk, it may have been
14 my phone or the fire department credit card and I walked
15 out. I walked out and I said, I've done nothing wrong and I
16 did not submit my resignation. I walked out and I called my
17 wife.

18 Q Why did you have to call your wife?

19 A I needed a ride home.

20 Q Were you in a company vehicle?

21 A Yes, sir. Yes, sir. I was assembling my personal
22 items and two fire marshals showed up at my door and they
23 allowed me to continue to collect my personal items and I
24 did the walk. I was taken for the walk downstairs.

25 Q Did they escort you out of the building?

1 A Yes, sir.

2 Q Do you recognize the document I just handed you?

3 A Yes, sir.

4 Q What is it?

5 A It's a resignation letter from me.

6 Q What's the date of it?

7 A July 7th, 2017.

8 Q So you told us a little bit about what happened on July
9 5th. Take us from that point to this e-mail.

10 A After I made one of the worst phone calls in my life to
11 my wife, I -- she took me to human resources and I took the
12 steps to file a grievance. That was Wednesday, the 5th.
13 And then I had the duty of sitting my children down that
14 night telling them what was going on. My daughter actually
15 asked if she could help with the bills.

16 The next morning, I got up. I pulled myself together
17 and I applied for 21 jobs. Thursday afternoon, I received a
18 call from Gardner Johnson from human resources and he said,
19 Mr. Edmonds --

20 MR. THYE: Objection, Your Honor, that's hearsay.

21 THE COURT: Sustained.

22 MR. PORTER: Your Honor, may I state something on the
23 record?

24 THE COURT: Lawyers approach.

25 (Bench conference.)

1 THE COURT: I sustain the objection.

2 BY MR. PORTER:

3 Q Mr. Edmonds, without going into what Mr. Johnson said,
4 tell us what you did as a result of what Mr. Johnson said.

5 A Nothing on Thursday afternoon. And it wasn't until
6 Friday afternoon when I received a call from Chief Jenkins
7 saying that he had to have my resignation. And I sat on my
8 bed and I begged for a job back. I said, Chief, you can put
9 me in the corner of the county. You'll never hear from me
10 again. I'll just do my best to improve those around me.
11 And he said, I've made my decision. I even asked, I said, I
12 sent an e-mail to Ms. Wilson asking for an opportunity to
13 work elsewhere in the City as they did with Chief Tinsley,
14 would you support that? He said, Yes, he would support that
15 elsewhere in the City, but he had to have my resignation.

16 I realized during that conversation my career with the
17 City was over. And I felt like the light shining on my
18 career in the fire service was dimming, so I, most
19 definitely, at a weak moment wrote down and wrote a small
20 paragraph, once again, upholding Chief Jenkins and all he
21 had done for me and thanking him for the opportunity while
22 submitting my resignation.

23 Q What's the date of that e-mail?

24 A July 7th.

25 Q 2017?

1 A 2017, yes, sir.

2 Q And that's an e-mail from you to Chief Jenkins?

3 A Yes, sir.

4 MR. PORTER: Your Honor, at this time, I believe
5 without objection, I'd like to introduce this into evidence
6 as Plaintiff's Exhibit No. 13.

7 THE COURT: Ms. Williams?

8 MS. WILLIAMS: No objection, Your Honor.

9 THE COURT: Plaintiff's Exhibit No. 13 is introduced
10 without objection.

11 (Plaintiff's Exhibit No. 13 marked and received into
12 evidence.)

13 BY MR. PORTER:

14 Q Have you been able to get back in the fire service
15 since you resigned?

16 A No, sir.

17 Q Read us what you wrote in this e-mail.

18 A Chief Jenkins, effective immediately, please consider
19 this as my notice of resignation. I have been honored to
20 serve you, the members of our organization and the citizens
21 of Richland County for now 30 years. The time has come for
22 me to move forward with my career and your mentorship over
23 the past 30 years will be a guide as I navigate through
24 these uncharted waters. I will most assured need you in
25 the future and I only hope you will feel confident in

1 calling on me if needed. And as I've said many times in the
2 past, thank you for the opportunity.

3 Q I asked you before, have you tried to get back in the
4 fire service?

5 A Yes, sir.

6 Q Tell us about that.

7 A I got one call back from the 21 jobs that I applied for
8 and it was for the chief of Charleston. And during a phone
9 interview, a preinterview, prescreening, it --

10 Q Don't go into what they said to you, but what happened
11 as a result.

12 A It became apparent that I didn't have the executive
13 fire officer position and I believe that's what disqualified
14 me from moving forward.

15 Q And the executive fire officer, was that the training
16 you were trying to get the chief to let you pursue?

17 A Yes, sir.

18 Q So what did you end up doing for a living?

19 A Handyman.

20 Q Are you still doing that?

21 A Yes, sir.

22 Q How much do you make a year?

23 A \$25,000 a year.

24 Q How much were you making at the fire department when
25 you left?

1 A 87,219.

2 Q Did you lose any benefits?

3 A A car, a phone, a computer, uniforms.

4 Q How much do you think that all cost?

5 A Approximately 10, \$12,000.

6 Q How has this affected your home life?

7 A I'm living in a garage apartment. I haven't spoken to
8 my girls in a month and my wife and I communicate by text.
9 And I have a long road ahead of me to repair the damage.

10 Q How has this affected you emotionally?

11 A As strong as I try to be, I was a City of Columbia
12 firefighter for a very long time. Not only is that over,
13 but it ended abruptly in a manner in which I was serving my
14 chief loyally. And again, I've got a lot of damage control
15 to do.

16 MR. PORTER: Thank you.

17 THE COURT: Ms. Thye.

18 CROSS-EXAMINATION

19 BY MS. THYE:

20 Q Good morning, Mr. Edmonds.

21 A Good morning.

22 Q When you resigned in 2012, was it stated that there was
23 a change in laws about how much you could earn?

24 A Yes, ma'am.

25 Q Did you expect to be rehired in your position that you

1 left?

2 A No, ma'am.

3 Q So you had to apply for that position; is that correct?

4 A Yes, ma'am.

5 Q And go through the interview process. There was no
6 guarantee, was, there, you would be rehired?

7 A Correct.

8 Q Did Chief Jenkins approve of you coming back in your
9 same position?

10 A Yes, ma'am.

11 Q Were you considered at that time a fire 4?

12 A Yes, ma'am.

13 Q Did you take a pay cut when you came back in 2013 after
14 retiring 25 years?

15 A Yes, ma'am.

16 Q Do you remember what your salary was when you came
17 back?

18 A When I came back, no, ma'am.

19 Q Was it appreciably less?

20 A Yes, ma'am.

21 Q When you left and separated employment in 2017 making
22 \$87,000, do you know what the difference was between what
23 you started in 2013 and what you ended in 2017?

24 A No, ma'am, I don't.

25 Q Do you think it was \$10,000 difference between where

1 you came in and where you ended up?

2 A I can't -- I don't want to guess at that. That would
3 be a guess.

4 Q Did you receive any raises between 2013 and 2017?

5 A Yes, ma'am.

6 Q So in those last four years of your second employment
7 with the City, you received periodic raises; is that
8 correct?

9 A Yes, ma'am.

10 Q When you left in 2017, were you making more than what
11 you had left in 2012?

12 A Again, I can't answer that accurately.

13 Q No idea?

14 A No, ma'am, I don't know.

15 Q Did others retire around the same time, 2012, 2013?

16 A Yes, ma'am.

17 Q Did Chief Jenkins do the same thing?

18 A Yes, ma'am.

19 Q Did he have to undergo the application process?

20 A I believe so.

21 Q Did you apply for his job?

22 A No, ma'am, I don't believe I did.

23 Q So it wasn't posted, his job?

24 A I can't answer that. I don't know about that.

25 Q Do you know if it was posted?

1 A I don't know.

2 Q Have you applied for other chief positions while you've
3 been employed --

4 A Yes, ma'am -- well, I'm sorry, finish your question,
5 please. I apologize.

6 Q Thank you. Have you applied for other chief positions
7 while you were employed with the City of Columbia?

8 A I don't recall, no, ma'am.

9 Q What about after, how many chief positions did you
10 apply for since 2017?

11 A I applied for 21 jobs. At least, one of them was a
12 chief position. I can't answer as to the other 20 how many
13 were chief officer positions.

14 Q The Charleston County Fire Department that called you
15 back, was it your understanding that was a chief's position?

16 A Yes, it was.

17 Q When you became -- I think you just testified when you
18 became aware it was a chief's position, you were no longer
19 interested in the job?

20 A No, ma'am, I didn't testify to that.

21 Q Why did you not take the Charleston Fire Department
22 job?

23 A Every executive level position in the fire service,
24 especially, you go through multiple stages of interviews,
25 written submissions, just a myriad of steps. And one of the

1 steps was a phone interview, prescreening interview,
2 whatever you may call it with a consulting firm that
3 Charleston Fire Department had hired to conduct a search.
4 And it was during that phone call that my qualifications
5 were discussed and I wasn't called back after that.

6 Q Do you remember a deposition that you gave late last
7 year in our office?

8 A Yes, ma'am.

9 Q Do you remember testifying about you decided you didn't
10 want to move to Charleston? Is that the real reason you
11 didn't accept or follow through with the interview?

12 A I don't recall saying that, but no, that's not the real
13 reason.

14 Q So you said it, but then that wasn't the real reason
15 that you declined to go down there and continue with the
16 interview process?

17 A If you say I said it, I'm going to trust your word.

18 Q We can look if you want to --

19 A No, ma'am.

20 Q What about after 2017 and after that first round of
21 applications that you made? You said you applied to 21
22 places, what about after that? When was the most recent
23 application you sent out?

24 A Not much after that week. I saw that I needed to
25 generate some income.

1 Q So is it fair to say, then, that you applied to several
2 jobs in the first week after your separation and then you
3 haven't looked for much since then?

4 A The first couple of weeks, yes, ma'am.

5 Q When was the call or the position with Charleston, how
6 close to the 2017 date was it?

7 A I would be speculating, I can't answer that. It was
8 during that window of 2017, mid to late. It might have been
9 early to late 2017, but that's all I can speculate.

10 Q But it was after you had separated with the City?

11 A The appointment was after separation, yes.

12 Q And then nothing since then?

13 A That's correct.

14 Q So you don't know as you sit here today, do you, if
15 there are other positions open that you would be qualified;
16 is that correct?

17 A I do not know, that's correct.

18 Q In your e-mail of March 14th, 2015, which is Exhibit 2,
19 you write about a staffing problem; is that correct?

20 A Yes, ma'am.

21 Q And in a following e-mail in July of 2015, which is
22 Exhibit 3, you are complaining about someone who is working
23 too long on restricted duty; is that correct?

24 A That's correct.

25 Q Is that inconsistent to you that you are worried about

1 staffing problems and then complaining about someone being
2 allowed to work?

3 A Staffing problems were in the operational division,
4 which is suppression. The restricted duty was in direct
5 violation of city policy. And the person was fulfilling a
6 public education, a restricted duty role. So the staffing
7 problems, his working or his not working would not
8 negatively or positively impact the staffing problems that
9 the fire department was enduring.

10 Q So there weren't staffing problems in the command staff
11 level, only in the suppression level, is that your
12 testimony?

13 A No, ma'am.

14 Q And you said that staffing problem was, at least,
15 partly made up of overtime usage, correct?

16 A No, the staffing problem was being overcome by using
17 overtime.

18 Q Are you suggesting that the City wasn't paying
19 employees the appropriate amount or are you suggesting that
20 they shouldn't be paying so many people overtime, they
21 should hire more folks rather than pay them?

22 A I'm not suggesting either.

23 Q Well, I thought you said you were always willing to be
24 part of the solution. What was your solution to them?

25 A The solution was to initiate a recruit school and

1 introduce firefighters into the system, at least, as fast as
2 they were leaving so we could maintain a staffing level and
3 suppression to meet the minimum hours needed in minimum
4 staffing levels.

5 Q So hiring more people, essentially, getting more people
6 through recruit school?

7 A Yes, ma'am.

8 Q So as you sit here, you're not suggesting that we
9 weren't paying people appropriately; is that correct?

10 A I'm not suggesting that, no, ma'am.

11 Q And you testified earlier that you worked at 24-hour
12 shift -- or the suppression folks would work 24-hour shifts,
13 24 on, 48 off; is that correct?

14 A Yes, ma'am.

15 Q So in a two-week period, wouldn't some amount of
16 overtime almost be inevitable?

17 A Yes, ma'am, there is a standard built-in amount of
18 overtime due to the fair standards act that firefighters
19 surpass the maximum that's allocated by that, so there is
20 overtime. That's why there is an overtime line item. We
21 maintain that overtime line item, but that was being
22 overused.

23 Q So the fact that we were paying any amount of overtime
24 isn't the problem, it's just the amount?

25 A That's correct.

1 Q And then in September of 2015, which is Exhibit 4 that
2 you have in front of you, it appears that you're protesting
3 not being allowed to take 10 additional days to go to a
4 training program, is that fair to say?

5 A Yes, ma'am.

6 Q Is that also consistent with the short staffing?

7 A What I did -- I don't work in suppression. I would be
8 part of the command staff. So again, the negative -- the
9 impact of staffing or the lack of staffing in operations or
10 suppression would to be impacted by my absence. And I also
11 assured the chief that I would work diligently remotely to
12 maintain my responsibilities.

13 Q Those were an additional 10 days beyond what you were
14 already allotted, correct?

15 A No, I wanted to use my regular leave as those -- yes,
16 ma'am, you're correct.

17 Q Now, let's jump ahead to the survey in March of 2016.
18 You understood what that survey was for, correct?

19 Generally, why it was being done?

20 A Yes, ma'am.

21 Q And did you have an expectation that folks would be
22 airing their grievances about a number of things?

23 A Yes, ma'am.

24 Q It wasn't all going to be flattery and pats on the
25 back, was it?

1 A No, ma'am.

2 Q But that's how a department improves and that's how a
3 department gets better. And you had every expectation that
4 you would be candid in your discussions with Ms. Stewart
5 leading to improvement in the department, is that fair?

6 A I was going to be truthful and consistent, yes, ma'am.

7 Q When it was your turn to speak with Ms. Stewart, did
8 you share with her the concerns that you had about the
9 department that you had shared in Exhibits 2, 3 and 4?

10 A Yes, ma'am, I'm sure.

11 Q Those varying complaints that you had made to your
12 supervisors, Jenkins and Tinsley, the year before dating
13 back in those exhibits to 2015?

14 A Yes, ma'am.

15 Q And in your e-mail of March 24th, 2016, to Ms. Wilson
16 after you had become concerned about the confidentiality of
17 this, did you tell -- and this is Exhibit 6. Did you tell
18 Ms. Wilson that every potential -- and I'm quoting from that
19 exhibit, so if you want to look at that. That every
20 potential malfeasance I table today has been addressed with
21 the division head and department head along with my solution
22 to each?

23 A Yes, ma'am.

24 Q So is it accurate to say that you had already explored
25 all of those concerns with your department heads, with the

1 chief and assistant chief, prior to the survey in March of
2 2016?

3 A Yes, ma'am.

4 Q And subsequently, when you wrote that e-mail to Ms.
5 Wilson, you also indicated to Ms. Wilson in that e-mail,
6 Exhibit 6, that you'd be willing to tell executive level
7 staff with the City the same concerns; is that correct?

8 A Yes, ma'am.

9 Q And in that e-mail, Exhibit 6, did you tell her that
10 you can't continue to support a leader who is conducting
11 himself as Chief Jenkins was at that time?

12 A If you say I said it.

13 Q No, I want you to be sure.

14 A Yes, ma'am.

15 Q Is that a yes?

16 A Yes, ma'am.

17 Q And in fact, after that, you then sent Mr. Baker, who
18 was the chief's higher in the chain of command, the same
19 concerns, didn't you?

20 A Yes.

21 Q And that's Exhibit 8. When you met with Liz Stewart,
22 how long did you meet with her?

23 A I can't answer that accurately.

24 Q Were you given a certain block of time?

25 A Maybe 30, 45 minutes.

1 Q Do you believe you kept within that block or did you go
2 beyond that?

3 A I can't answer that accurately.

4 Q I'm going to ask you a little bit about your
5 obligations. You testified that your area of responsibility
6 as assistant chief included logistics, which was supply and
7 equipment; is that correct?

8 A Yes, ma'am.

9 Q And facilities; is that correct?

10 A I'm responsible for the facilities?

11 Q Or I think your word was liaising with the general
12 services?

13 A Yes, ma'am.

14 Q Were you aware of complaints about water damage to some
15 of the stations?

16 A I was aware of the result of potential water damage,
17 yes, ma'am.

18 Q Were you aware of those complaints prior to 2017?

19 A I would imagine so. Before the beginning of 2017,
20 there was a mold issue at Station 9. I'm not sure when that
21 became evident, but yes, within early '17, I was aware of
22 it.

23 Q Were you supervising the process for remediation for
24 the fire department in Station 9?

25 A No, ma'am.

1 Q Who was?

2 A I believe building services under the oversight of
3 Kelvin Keisler and David Nochis, department head.

4 Q Who in the fire department was responsible for watching
5 that water damage remediation?

6 A That would be me.

7 Q Had you delegated that responsibility to anyone else?

8 A Not completely. I most definitely probably told maybe
9 my logistics officer to help me keep an eye on it, if you go
10 by Station 9 or something, but no, I didn't delegate it.

11 Q Let me ask you about the glove issue. Were you aware
12 of a glove test in 2012, 2011, '12, '13, somewhere in that
13 time?

14 A Yes, ma'am.

15 Q And the Honeywell Super glove was tested at that time?

16 A Yes, ma'am.

17 Q Were you aware of a second glove test conducted much
18 closer to the date of purchase, 2016 or 2017?

19 A Only after its inception and I don't know who initiated
20 it.

21 Q So you had no idea the second glove test was coming?

22 A No, not until I heard.

23 Q So you didn't know whether the Honeywell glove was even
24 tested in that round?

25 A In the second?

1 Q In the second.

2 A Again, I didn't know any specifics other than there was
3 a glove trial going on.

4 Q So you don't know which glove ranked better in the
5 second glove test?

6 A That is correct.

7 Q Were you the one who decided which gloves to purchase?

8 A I was the one that initiated and conducted the process,
9 but as I stated before, I presented the information to my
10 boss at the time, Harry Tinsley, and he told me to go ahead
11 and purchase it.

12 Q So it's your testimony you weren't the final one
13 responsible for that glove purchase?

14 A No, I'm not the final one responsible for that
15 purchase.

16 Q So you want the chief responsible for that purchase?

17 A No, I'm not the final person that is responsible for
18 the purchase.

19 Q Having conducted a glove test in 2012 or 2013, why did
20 you not check to see if there was a more recent glove to
21 purchase? Technology changes over time, does it not?

22 A Yes, ma'am, it does. The reason is two-fold. First,
23 it's a very laborious process, as you know, for a major
24 purchase like this. Developing the specification,
25 obviously, the trial itself, getting the endorsement for

1 leadership on the floor, your supervisor's endorsement and
2 then running through the procurement process. That's long
3 in itself.

4 And the big thing for me was the NFPA 1971 compliance,
5 which the standard hadn't changed, it was still compliant
6 with NFPA 1971. And I go back to the availability of
7 smaller sizes for our female firefighters.

8 Q So you said it was a laborious process. There was
9 already a trial ongoing. Now, you have found out that there
10 was a trial going on at the time you made the purchase; is
11 that correct?

12 A Yes, there was a trial going on at the time of the
13 purchase, yes, ma'am.

14 Q And you had no idea about that?

15 A Only after -- I had no idea who initiated it. Once it
16 was initiated, I didn't endorse it, I didn't supervise it.
17 I had nothing to do with it. I already had the data in
18 front of me to pursue the glove that was approved.

19 Q So rather than consider what was going on currently,
20 you reached back to technology five years old and purchased
21 a glove, the Honeywell Super glove?

22 A I tried to cure a case of analysis paralysis and finish
23 the job that needed to be done instead of revisiting the
24 issue and reanalyzing it and stagnating it for another year.

25 Q So because you didn't want to wait for the end of the

1 current trial, you purchased an Iphone 5 when and Iphone 10
2 was on the market; isn't that fair?

3 A No, that's not fair.

4 Q I'm going to ask you to refer to Exhibit 12, please,
5 which is the glove report.

6 A (Witness complies.)

7 Q And at the bottom of the third page, I'm not sure if
8 you're counting the cover sheet or not, but at the very
9 bottom of the page that is marked 475, if you look -- you
10 were asked to read the very top paragraph and then you were
11 stopped after "a vendor who wasn't even part of the glove
12 trial". Will you read the next two sentences?

13 A If I may have a copy of it. I don't have one up here.

14 Q You don't have one?

15 MS. THYE: May I approach, Your Honor?

16 THE COURT: Yes, you may.

17 THE WITNESS: Please guide me on my instructions again.

18 BY MS. THYE:

19 Q It is at the bottom right at Page 475.

20 A Yes, ma'am.

21 Q That very first paragraph up at the top, there is a
22 sentence that you read that concluded with "a vendor who
23 wasn't even part of the glove trial". Will you pick up and
24 read the rest of that paragraph?

25 A Yes, ma'am. None of these allegations were sustained

1 and no one could or would tell me who they heard it from or
2 would just say numerous people. When I attempted to get
3 names or anything of the sort, they would not or could not
4 remember or say they just heard it around.

5 Q And on the next page of that same exhibit, reading from
6 the conclusion, there is a reference to the NFPA glove
7 standards. Can you start with that paragraph? It begins
8 "glove manufacturing standards".

9 A Glove manufacturing standards, NFPA standards, OSHA
10 standards and the science behind it has changed dramatically
11 in that time. The concern is that those gloves may have
12 been the best on the market in 2011 or '12, but it is now
13 '17, more than five years later. Continue?

14 Q Yes, please.

15 A Another issue that was brought up was the department
16 not having sized for gloves. The gloves purchased have over
17 15 different sizes to accommodate almost any size hand. The
18 concern is that most of the gloves purchased will not be
19 able to be used due to the fact that random sizes are
20 ordered and opposed to having them sized prior to.

21 Q Thank you. So the concern was, quite frankly, that
22 technology may have changed. So even if the standard was
23 still the same, even though it meets that standard, it would
24 change over a period of time; is that correct?

25 A That's potentially correct, yes, ma'am.

1 Q Mr. Edmonds, in addition to the e-mail of 7/7/2017, did
2 you also send an e-mail earlier the morning of July 7th,
3 2017 addressed to Aubrey Jenkins and Ms. Colleen Foster?

4 A Must have or you wouldn't ask me about it.

5 Q It's not a trick question. We'll get there. Can you
6 identify that e-mail for me, please?

7 A And your question is identify the e-mail?

8 Q Yes, sir. Do you remember sending that e-mail?

9 A I don't remember sending it, but I'm not going to dare
10 say I didn't. Everything's a blur after the 5th.

11 Q Is that your Gmail account address?

12 A Yes, ma'am.

13 Q And at the very end, you sign Mike and there's a phone
14 number below. Is that a number that you --

15 A Yes, ma'am. Yes, ma'am.

16 Q So is there any reason to believe you did not send that
17 e-mail?

18 A No, ma'am.

19 Q What was your intent in sending it?

20 A Everything I did concerning the City of Columbia Fire
21 Department following the 5th was in pursuit of trying to get
22 a job back. So that was an attempt at damage control and
23 capitulation.

24 MS. THYE: At this time, Your Honor, we would move to
25 admit that into evidence.

1 THE COURT: Is it marked?

2 MS. THYE: It is not. It would be Defendant's 1.

3 MR. PORTER: Without objection, Your Honor.

4 THE COURT: Defendant's Exhibit 1 is admitted into
5 evidence without objection.

6 (Defendant's Exhibit No. 1 marked and received into
7 evidence.)

8 BY MR. THYE:

9 Q Mr. Edmonds, will you please the first couple of
10 sentences?

11 A Chief Jenkins, first, let me thank you for all you have
12 done for me in the past. Secondly, please accept my
13 sincerest apologies for the problems I have caused you
14 before today.

15 Q And at the bottom of that page, there is a sentence
16 that starts out "sent an e-mail to the city manager", would
17 you start there and --

18 A I have sent an e-mail to the city manager and Pam
19 Benjamin to ask to be transferred elsewhere in the city. I
20 will forward you that e-mail so you can see my humble
21 attempts. I have filed for a grievance, but after
22 contemplating my options, I am considering your offer to
23 resign barring being granted these sincere requests.

24 Q Thank you. And in fact, then you followed that up
25 later on that afternoon with what I think is marked as

1 Exhibit 13, your resignation?

2 A Yes, ma'am.

3 Q You said that you were out uniforms and equipment,
4 things like that and you placed a value on those of \$10,000?

5 A Yes, ma'am, I approximated that value.

6 Q Are those uniforms given to everyone in the fire
7 department or do you have to purchase them?

8 A No, you're allocated those. You're given those.

9 Q And after you leave employment, do you take those with
10 you?

11 A I do have them, yes.

12 Q And so the value that you attribute to those uniforms
13 is based on that you're not going to get any additional
14 ones?

15 A No, unfortunately, I'm not allowed to wear them
16 anymore.

17 Q Because you're not a member of the fire service, you're
18 not allowed to wear them?

19 A That's correct.

20 Q And I think, without getting too far into the statement
21 of the blog, was your name anywhere listed in those two
22 sentences in that blog?

23 A No, ma'am.

24 Q Was there anyone who indicated that they saw the blog
25 and knew it was you?

1 A Most every person that texted me or called me asking if
2 it was me, yeah.

3 Q Were they all members of the fire department?

4 A I would imagine so, yes, ma'am.

5 Q And those same members of the fire department who had
6 worked with you in the past?

7 A Yes, ma'am.

8 Q Would know the type of person that you are prior to
9 that?

10 A Oh, absolutely.

11 Q Did any of those folks treat you any differently after
12 that article came out? Did any of them shun you in public
13 or in church?

14 A Only the members that were investigating me as a result
15 of that article.

16 Q So the folks who were trying to maintain impartiality
17 and trying to make sure that the process was upheld?

18 A That's correct.

19 Q So the article talks about the person in charge of
20 purchasing the gloves. Didn't you just testify that Chief
21 Jenkins was the final word on purchasing the gloves?

22 A I did.

23 Q And that, oftentimes, purchases of that size have to
24 get approval, either city council or him?

25 A Yes, that would have to go through council.

1 Q Mr. Edmonds, you were asked to resign by the person,
2 the chief, that you said you would no longer support
3 professionally, isn't that what your e-mail said?

4 A It did say that.

5 Q How did you think that would work, the chief having
6 members of his executive team not on the same path?

7 A When you're continuing to attend meetings and you're
8 asked, demanded to fix problems that you've offered
9 solutions to, but yet, you don't have the power to fix them,
10 but you try to do everything you can, it's like beating your
11 head against the wall. So what do you do?

12 Q Well, if you can't support the leadership, why would
13 you want to stay in a position like that?

14 A Because I love the Columbia Fire Department.

15 Q Or was it the plan that you wanted to be the chief?
16 That you felt you could run that department better, which is
17 why all those e-mails point out problems, but then every
18 time a problem comes up, you're not the one ultimately
19 responsible?

20 A No, ma'am.

21 Q Isn't that what this really boils down to? You wanted
22 to retire as chief?

23 A No, ma'am.

24 MS. THYE: May I beg the Court's indulgence for just a
25 moment?

1 THE COURT: You may.

2 (Pause.)

3 MS. THYE: Nothing further from the City.

4 THE COURT: All right.

5 Any redirect?

6 MR. PORTER: Very brief.

7 REDIRECT EXAMINATION

8 BY MR. PORTER:

9 Q I'll try to approach this in chronological order,
10 Michael, so we'll step back. What are the safety
11 implications of excessive overtime use?

12 A As I stated earlier, overtime in limited amounts is
13 good for morale, it's good for the employee, but when you
14 start exceeding an acceptable amount of overtime, now you're
15 putting lives at danger, not only on the truck, but in the
16 public.

17 Q Tell us how important chain of command is at a fire
18 department?

19 A Very important.

20 Q So that we can get the full context, will you please
21 read the entire bottom paragraph on Plaintiff's Exhibit 6?

22 A Madam Manager, approximately two years ago, you asked
23 me on two occasions, I need you to support your chief. I
24 responded the first time, yes, ma'am, and you leaned in and
25 said it again, to which I vehemently said yes, ma'am.

1 Today, I feel I have done just that to a level I can be
2 proud of. I will not bore you with the specifics of my
3 efforts in that short conversation, but I have done
4 everything that I can to support Chief Jenkins by making him
5 and the department look good, perform admirably and as well
6 as conduct myself appropriately as the assistant chief of
7 administrative for the Columbia Fire Department. But as I
8 sit here concerned about my present and my future, I cannot
9 continue to support a leader that is conducting himself in a
10 way I cannot endorse.

11 Q Were you wanting the chief to change or the chief to
12 leave?

13 A I wanted the leadership, not only the chief, to change.

14 Q Is building services within the fire department at all?

15 A No, sir.

16 Q Was the second test approved through your office?

17 A No, sir.

18 Q Did your office handle procurement?

19 A For the fire department, I would initiate the requests,
20 but city procurement -- everything went through the City
21 procurement office.

22 Q Okay. As far as fire department materials would go,
23 did you handle the requests?

24 A Yes, sir.

25 Q Based on what you heard, do you have any doubt that you

1 were the chief referred to in the paragraph you read to the
2 jury of that article?

3 A No, sir, no doubt.

4 Q If any of these gloves were overages, did not fit,
5 could they be mailed back?

6 A The City of Columbia and the fire department
7 specifically have a great deal of purchasing power with all
8 the vendors. They will bend over backwards to work with us.
9 If we had one pair of gloves that we couldn't use, they
10 would be exchanged.

11 Q To clarify something, I think Ms. Thye brought up a
12 good point, when you talk about the other money you lost,
13 are you talking about the price tag on the uniforms or the
14 price tag on the car and the phone?

15 A The replacement items.

16 Q So the car and the phone?

17 A Yes, sir, and clothes.

18 Q Were you given any options other than resign or be
19 fired?

20 A No, sir.

21 MR. PORTER: Thank you.

22 THE COURT: Any recross, Ms. Thye?

23 MS. THYE: No, Your Honor.

24 THE COURT: Mr. Edmonds, you can step down.

25 (Witness steps down.)

1 Mr. Porter, call your next witness.

2 MR. PORTER: Yes, Your Honor. The Plaintiff calls
3 Teresa Wilson.

4 TERESA WILSON, after being duly
5 sworn, testified as follows:

6 THE CLERK: Thank you. Have a seat and state your
7 name, please.

8 THE WITNESS: Teresa Wilson.

9 DIRECT EXAMINATION

10 BY MR. PORTER:

11 Q Ms. Wilson, we won't be going long, but would you like
12 me to get you a cup of water?

13 A I'll let you know if I need something. Thanks.

14 Q First and foremost, will you introduce yourself to the
15 jury by telling us a little bit of your background and what
16 do you do for the city?

17 A My name is Teresa Wilson. I'm the city manager for our
18 city. In that capacity, I work with all 2300 employees at
19 the City, over 40 something departments, including a fire
20 department and Chief Jenkins. Anything more other than
21 professionally?

22 Q I'll flush it out a little better. Are you the
23 ultimate supervisor for each of the employees at the city?

24 A Ultimately, personnel reports to the city manager.

25 Q Do you have the authority as city manager to offer

1 employment, terminate employment and authorize changes in
2 terms and conditions of employment for employees at the
3 City?

4 A Ultimately, I do, but, again, I have several department
5 heads, assistant city managers and, obviously, I don't
6 interact with every single employee on a daily basis.

7 Q Where were you in Mr. Edmonds chain of supervision at
8 the time of his separation?

9 A At the time, we had an assistant city manager that also
10 had oversight over the Columbia Fire Department, so that
11 assistant city manager reported to me.

12 Q Would it be fair to say it was you, Senior Assistant
13 City Manager Baker, Chief Jenkins, then Michael Edmonds?

14 A That would be fair and correct.

15 Q Considering the layers between y'all, would you have
16 firsthand knowledge about whether or not he was meeting his
17 expectations?

18 A Not firsthand knowledge.

19 Q And similarly, did you have firsthand knowledge about
20 the circumstances of the separation from employment,
21 including whether or not he was forced or not?

22 A No, I did not.

23 Q Were you involved in the decision in the spring of 2016
24 to bring in a third party consultant to assess the city fire
25 department?

1 A Yes, I as involved with that. It was my decision.

2 Q Generally, and I'll keep it general because I know some
3 of this is not what we're here about, what brought that
4 about?

5 A So, for a period of time leading up to the decision for
6 me to engage with Stewart & Associates, there had been some
7 situations in the department that gave me some concern,
8 behaviors of maybe some of our fire department staff and I
9 just categorize it as judgment calls they were making,
10 whether or not it was something regarding an incident that
11 may have happened in one of the stations or something
12 regarding training and recruitment and how maybe recruits
13 were being handled.

14 And I just wanted for my own edification to get clarity
15 engaging a third party so that our fire department employees
16 felt comfortable that the situation was being given a set of
17 fresh eyes. It wasn't me trying to question them
18 personally, but rather, making them at ease that this was
19 going to be a process where they could be forthcoming and
20 share how they felt and what they had experienced.

21 Q Did y'all have concerns about command staff as well?

22 A My concerns were probably more related to were we at
23 the time in the department utilizing the right structure.
24 There's lots of structures for fire department command
25 staffs meaning sometimes a fire chief might have deputies

1 chiefs, he may have assistant chiefs and so on. I really
2 wanted to ensure that that structure was appropriate.

3 And, also, that one of the things I had heard from
4 lower level staff at the fire department is they wanted to
5 have the opportunity for growth and development. And so I
6 wanted to make sure that we were providing those
7 opportunities as well.

8 Q Had y'all hired Liz Stewart & Associates before in the
9 past?

10 A She had been utilized in the past for some other, I
11 think, issues maybe with the fire department. Liz has a lot
12 of experience across the country working with fire
13 departments, in particular. I don't believe I was city
14 manager at the time when she was utilized in the past.

15 Q I'm going to approach, if I may, ma'am, and going to
16 hand you Exhibit 1. And you'll see that I've got a slightly
17 larger copy of Exhibit 1 on this placard. Would you agree
18 with me -- well, first, can you tell us what Exhibit 1 is?

19 A At the time that we decided to do the assessment, I
20 wanted to make sure that the fire department staff, all of
21 them, knew from me personally what my intentions were with
22 it. So this is an e-mail that I sent to the fire
23 department, the COC is the City of Columbia Fire Department
24 employees. So that's a method that we have with the City to
25 communicate, obviously, through e-mail with whole

1 departments. So I sent an e-mail to the entire department
2 about the assessment or survey that they would be engaging
3 in.

4 Q Would you agree with me that you reference
5 confidentiality or anonymity three separate times in the
6 e-mail?

7 A I'll take a look at your highlights, so yes, I guess
8 that would be true. I don't remember how many times I said
9 it, but that was certainly something that needed to be
10 underscored, so, yes.

11 Q Was your intent so that the readers would rely on that
12 and, therefore, be candid with Liz Stewart?

13 A That's correct.

14 Q Do you agree with me that a failure to maintain
15 confidentiality might undermine the process?

16 A Sure, if that occurred. The whole intent, as Mr.
17 Porter stated, from my standpoint was to give a set of fresh
18 eyes, to give us a third-party review, to not have the
19 employees feel like management was necessarily conducting
20 the interviews and they would be more forthcoming in
21 discussing anything that they felt.

22 Q I'm going to approach briefly again, ma'am, and show
23 you one more document. Do you recognize that e-mail?

24 A I do.

25 Q And to kind of shortcut the process, is that an e-mail

1 that Michael complained that he felt his confidentiality had
2 been compromised?

3 A Yes.

4 Q What did you do in response to that?

5 A I just responded to him reassuring him what my
6 intentions were for the process. I mean, I wasn't present
7 for his interview. I certainly couldn't speak to what he
8 felt he experienced during the interview or after the
9 interview, but I knew as the process continued, we were
10 going to ensure that it was done in a professional and
11 confidential manner. And I just reassured him of that.

12 Q With respect to the survey, was there discussion about
13 Michael Edmonds when Liz Stewart presented the results of
14 the survey?

15 A There was discussion about many things and many people
16 in the department. That was the whole purpose of it,
17 ultimately, for her to share with me candidly, but
18 confidentially what she had assessed. So I can't sit here
19 and say for certain every exact thing she said about one
20 person or another, but I would venture to say there were
21 discussions about the command staff, members of it and on
22 down the chain. In order for me to impact change, I had to
23 know what she found out.

24 Q Maybe this will give you a little more of an idea,
25 let's move past Michael Edmonds, was there specific

1 criticism conveyed to you about the fire chief in some of
2 the results?

3 A There was -- I would categorize it as improvements that
4 the employees would like to see across the board. A lot of
5 that had to do with the opportunities for growth and
6 advancement, like I mentioned before. That was going into
7 it, something that I wanted to explore. There was the
8 discussion of maybe some of the specific incidents,
9 depending on who she had talked to regarding things that may
10 have happened with training and recruitment, et cetera.

11 But to answer your question specifically, there wasn't
12 any glaring reference about one person or another that stood
13 out to me, the fire chief or anybody else. It was more of a
14 wholistic review from all of the employees in the department
15 about things they were experiencing.

16 Q Did you review the written survey results when it came
17 out?

18 A I reviewed it along with our HR director and our
19 assistant city manager.

20 Q Do you remember the term LOCO being used quite a bit?

21 A No.

22 Q Have you heard the saying, last one in the chief's
23 office?

24 A No.

25 MR. PORTER: Beg the Court's indulgence.

1 (Pause.)

2 MR. PORTER: Your Honor, I do not plan on introducing
3 this document, but I'm going to hand up a copy for your
4 review. I believe the Defense may have some objection.

5 Q First and foremost, do you recognize this document?

6 A Yes.

7 Q And what is it?

8 A This is a compilation of the fire department officer
9 interviews that Ms. Stewart compiled.

10 Q Turn with me to Page 9 and it's got the Bates number,
11 Ms. Wilson, of 411 through 413.

12 A I'm sorry, what is the last thing you said?

13 Q 411 through 413 in the bottom right-hand page numbers.

14 A Okay.

15 Q And you reviewed this report with Pam Benjamin?

16 A Well, when I review a report of this magnitude, I'm
17 looking for certain things. So yes, I reviewed the report.
18 If you're asking me if I reviewed every single line and
19 every single word of it, probably not.

20 Q Oh, I understand. This isn't that sort of a question.
21 But how many times was LOCO mentioned in the very first 10
22 bullets under discussion of command staff?

23 A Do you want me to count this?

24 Q How about I'll do it for you. Would you agree with me
25 that LOCO is mentioned, at least, seven times in those first

1 10 bullets?

2 A Yes.

3 Q And LOCO is referring to an idea that the last one out
4 of the chief's office gets his way, is that not correct?

5 A Do you want me to sit here and read through it for
6 context?

7 Q How about this, I'll read you bullet number two. It's
8 common knowledge that to work the system, you use LOCO, last
9 one in the chief's office. Do you think that's what that
10 was saying?

11 A Can you repeat the question?

12 Q Yes, ma'am. The second bullet reads: It's common
13 knowledge that to work the system, you use LOCO, last one in
14 the chief's office.

15 A Okay.

16 Q And I told you what I thought that meant, basically, to
17 get your way, you just need to be the last one in the
18 chief's office. Is that how you read that as well?

19 A I don't recall reading this in any context. And, of
20 course, as we're talking about it now, we're not talking
21 about it in context. So are you going to get in who said it
22 and why?

23 Q No, ma'am. This is a -- the survey results, a
24 compilation of what everyone said, right?

25 A Right.

1 Q Let's short circuit it this way. The next two pages,
2 and you can skim it to answer, would you agree with me, more
3 or less, are criticisms about Chief Jenkins?

4 A Yes, there are criticisms by individual firefighters.
5 I assume she took what they exactly said and inserted it in
6 her report.

7 Q And y'all were on notice of this report on April 15,
8 2016?

9 A Yes.

10 Q And just so we have a record clear, Ms. Wilson, and I
11 thank you very much for your time, you are currently the
12 city manager for the City of Columbia; is that correct?

13 A Yes.

14 MR. PORTER: Thank you, ma'am.

15 THE COURT: Ms. Williams or Ms. Thye?

16 CROSS-EXAMINATION

17 BY MS. WILLIAMS:

18 Q Good morning, Ms. Wilson.

19 A Good morning.

20 Q You just testified that it was your decision to
21 commission a consultant to do an assessment of the fire
22 department, correct?

23 A That's correct.

24 Q Will you tell us the reason that you chose to use an
25 outside consultant as opposed to using someone within the

1 City?

2 A I've been doing this for a long time now, in management
3 and working with employees. And oftentimes, when you really
4 want to get to the bottom of things and have people feel at
5 ease with probably some hard questions, some uncomfortable
6 situations that you want them to share, having their bosses,
7 supervisors, managers of the city is probably not the best
8 way to get that done.

9 In this situation, over a period of time, like I
10 described, there had been a couple of incidents where I felt
11 like members of the fire department -- just some judgment
12 calls that had been used. I wanted them to talk openly
13 about it. Not that there's ever any fear of retribution or
14 retaliation anywhere in the city, but just to be even more
15 transparent and open if we had a process for them. That it
16 was better to give them a sense that there was fresh eyes
17 and a person who was very experienced in working with fire
18 departments to come in and just let them engage and talk
19 with her.

20 Q And out of all of the consultants that you had to
21 choose from, why did you select Stewart & Associates?

22 A Well, Liz had experience with the city. She knew the
23 structure of our fire department. She had done this, like I
24 said, across the country with other fire departments. She's
25 familiar with different models of command staff structure,

1 et cetera, so we felt like she was the best choice.

2 Q Now, when the city agreed to contract with Ms. Stewart,
3 what, if anything, was the agreement as to confidentiality?

4 A Well, I wanted it to be confidential as far as what was
5 shared with her during her process. I didn't get into with
6 her how she conducted her process because she's done this a
7 lot and is a professional and I had faith that she would
8 handle it accordingly. Obviously, the confidentiality stops
9 when it gets to me. I have to know that information that
10 she finds out. So it was, ultimately, going to be shared
11 with me.

12 Q And when you contracted with Ms. Stewart, did you have
13 any control over her techniques or methods of conducting the
14 study?

15 A No, no. I didn't want to give her any boundaries as to
16 how she would ascertain the information because I wanted the
17 information and I wanted it in the best manner that she felt
18 she needed to get it. So I didn't get into how she would
19 conduct the interviews or anything of that nature.

20 Q Now, that report, that final product that you received
21 from Ms. Stewart, is that what you were expecting to receive
22 from her? In other words, did she deliver upon what you
23 commissioned her to do?

24 A She did. And honestly, the report is really just
25 bullets and bullets of phrases and conversations and things.

1 that she tried to capture so we would have it in perpetuity
2 and for our record. What is more beneficial to a manager
3 like me are her observations of what's going on in the
4 department, her recommendations.

5 So to say that I relied on this piece of paper or these
6 pieces of paper is probably not so much as to combine what
7 she and I discussed regarding structure, regarding morale,
8 regarding recruitment technique and training and different
9 incidents that had occurred. So yes, she delivered on what
10 I asked her to do.

11 Q Now, you just mentioned that your report is a series of
12 bullet points. Does it have names associated with it as to
13 who said what?

14 A From a personnel standpoint, at some point, I'm sure in
15 her documentation, she documented those individuals she
16 talked to. This report doesn't have names.

17 Q Okay. So just to be clear, the report itself does not
18 have names of who said it?

19 A Of who said what. It references names like, you know,
20 the chief or, I guess, the individual, if they're talking
21 about me or whomever they're talking about, but it doesn't
22 say who said these things.

23 Q Now, you testified earlier that you did not receive
24 every line of the report, but you did review the report,
25 correct?

1 A I reviewed it in its totality. I reviewed it in the
2 context of what I was seeking to understand from her.

3 Q And you may have already answered this, but tell us a
4 little bit about what you were looking for.

5 A I was looking for some foundation as to maybe why
6 certain instances that had first given me pause to even do
7 this were occurring in the department. Police and fire
8 departments, with working with them for a long time now, are
9 quasi-military at some times and they're like fraternities
10 at some times. I mean, just being candid and true. And
11 behaviors from a manager's standpoint of boys will be boys
12 or when we're having recruitment and training or exercises
13 how people are treated and what's tolerated, I needed to
14 hear from the fire department guys and ladies and men what
15 they were experiencing, that's one example, in a very
16 confidential manner. And that was one thing I was looking
17 for.

18 I wasn't so much looking for who said what about whom,
19 but conduct, behavior, how we're carrying ourselves, the
20 character of the department, the opportunities for growth,
21 the structure of the command staff. Yes, I got a good
22 depiction of those things wholistically by virtue of us
23 doing this exercise.

24 Q Now, other than the Plaintiff, Mr. Edmonds, who, if
25 anyone, gave you notice that they felt that the

1 confidentiality was breached during the assessment?

2 A No one.

3 Q Do you have reason to believe that Ms. Stewart breached
4 confidentiality?

5 A I do not. I trust the process that was conducted. I
6 know that individuals sometimes, for whatever their reasons
7 are, when they've been close to their role, to the
8 department may feel a certain way. That doesn't mean that
9 they were led to feel that way. So I trusted what she
10 accomplished for the City of Columbia.

11 Q Now, earlier, Mr. Porter asked you to testify as to
12 your duties and your responsibilities for the city, is it
13 fair to say that you have authority to speak on behalf of
14 the city?

15 A Absolutely, I have authority to speak on behalf of the
16 city.

17 Q Are there others who have authority to speak on behalf
18 of the city?

19 A Yes.

20 Q Can you mention who they are?

21 A So in our form of government, we're a council manager
22 form of government. And that means as the city manager, I
23 report to seven elected officials. I have seven bosses on
24 any given day. And what they decide from a policy
25 standpoint is one thing. What I do to implement that policy

1 with all of our employees of the City is another. I'm meant
2 to be nonpartisan, not an elected person. So we try to keep
3 a very fine line between those two roles. The mayor and
4 council have the ability to speak for the City of Columbia.
5 I have the ability to speak for the City of Columbia and
6 then I can also give that authority to speak to assistant
7 city managers, depending on what the subject matter might
8 be, department heads in the city. And it usually probably
9 ends with that. We have different public information
10 officers who work with our employees in different
11 departments, so they work with the media, et cetera. And
12 sometimes, they may speak or act as spokespersons as well.

13 But the key to all of that is when I speak or an
14 employee speaks that I've designated, we're not getting into
15 the politics of things or any of that. We are here to do
16 the work of the city.

17 Q So you just testified that from time to time, you can
18 delegate the authority to speak on behalf of city to other
19 people?

20 A Sure. Sure.

21 Q Would you ever give someone permission to speak
22 anonymously on behalf of the city?

23 A Oh, no.

24 MS. WILLIAMS: Thank you. No further questions.

25 THE COURT: Mr. Porter, any redirect?

1 MR. PORTER: Yes, Your Honor, just a couple.

2 REDIRECT EXAMINATION

3 BY MR. PORTER:

4 Q Ms. Wilson, you wouldn't have put confidentiality and
5 anonymity into that e-mail three times if you didn't think
6 there were employees that were worried about retribution,
7 would you?

8 A I would have put it regardless.

9 Q Look at Page 2 of the Stewart & Associates report.
10 First and foremost, you agree key findings were made?

11 A Like I said earlier, she made recommendations and
12 findings and that's what I more relied upon.

13 Q I'm going to read you something to make it easier upon
14 you, but ask you if I read it right. If we drop down five
15 paragraphs, the first sentence says: The most significant
16 finding and the greatest concern is the lack of trust in the
17 department of leadership. Did I read that right?

18 A Yes, you did.

19 Q When we move down, it talks about leadership and
20 recommended actions. It says: Chief Jenkins jointly with
21 City leadership must decide he is willing to take the
22 necessary steps to generate trust from his staff. Did I
23 read that right?

24 A Yes.

25 Q And everything I read is on the first page with writing

1 on it with the report, correct -- or the second page with
2 writing on it in the report, correct?

3 A That's correct.

4 Q If we look on Page 3, under discipline, do you agree
5 that one of the citing concerns is -- the very first citing
6 concern under discipline is specific policies on universal
7 departmental discipline processes, behaviors and
8 consequences should be established. Did I read that right?

9 A That's correct.

10 MR. PORTER: Thank you, ma'am.

11 THE COURT: Any recross, Ms. Williams?

12 MS. WILLIAMS: Yes, Your Honor.

13 RECROSS-EXAMINATION

14 BY MS. WILLIAMS:

15 Q Ms. Wilson, those findings that Mr. Porter just had you
16 read, are those Ms. Stewart's conclusions?

17 A They were. They were her conclusions and all in line
18 with things that I think I mentioned to the jury.

19 Q And again, those findings, no one in particular, no
20 employee in particular is associated with saying that those
21 are the findings? Those are all Ms. Stewart's work,
22 correct?

23 A That's correct.

24 Q So did Ms. Stewart at any time ever tell you verbally
25 who said what in those reports?

1 A No.

2 MS. WILLIAMS: Thank you. No further questions.

3 THE COURT: Thank you.

4 Ms. Wilson, you can step down.

5 (Witness steps down.)

6 THE COURT: Call your next witness, Mr. Porter.

7 MR. PORTER: The Plaintiff calls Reverend Allison
8 Baker.

9 ALLISON BAKER, after being duly
10 sworn, testified as follows:

11 THE CLERK: Thank you. Have a seat in the witness
12 stand, please. State your name for the record.

13 THE WITNESS: Smith Allison Baker.

14 DIRECT EXAMINATION

15 BY MR. PORTER:

16 Q Reverend Baker, we're going to be here a little bit
17 longer than Ms. Wilson, but should be pretty quick. But
18 just in case, I'm going to get you some water.

19 A Okay.

20 Q Reverend Baker, will you tell us a little bit about
21 yourself, where you're from, what you did at the city, that
22 sort of thing.

23 A Grew up in Suffolk, Virginia, worked for the City of
24 Norfolk, City of Suffolk as a recreation person, director of
25 parks and recreation in Suffolk. Went to the City of

1 Richmond for five years as director of parks and recreation
2 and community facilities. I came to Columbia in 1997 as the
3 director of parks and recreation. In 2004, I was promoted
4 to assistant city manager and in 2008, I was promoted to
5 senior assistant city manager.

6 Q Now, as senior assistant city manager, what was your
7 job responsibilities?

8 A I had responsibility for a number of departments,
9 generally, always included parks and recreation, but I have
10 supervised the police department. As I left the city, I was
11 responsible for the fire department, emergency preparedness,
12 the 911 center. I supervised for a while the public
13 information office and parks and recreation.

14 Q And prior to Chief Edmonds' separation, would you have
15 been within his chain of command?

16 A Yes.

17 Q And I believe that chain of command earlier being
18 Teresa Wilson as city manager, you as senior assistant city
19 manager, Fire Chief Aubrey Jenkins and then Michael Edmonds,
20 along with several other assistant chiefs?

21 A Yes, at some point during my supervision of the
22 department, Harry Tinsley was between Chief Jenkins and
23 Chief Edmonds level.

24 Q Would you agree with me y'all got rid of that deputy
25 chief position and Mr. Tinsley became the city's emergency

1 director sometime after Ms. Stewart's study?

2 A I think it actually happened some time after Liz
3 Stewart's study. There were discussions about making some
4 changes prior to that. There was a need for a focus on
5 emergency preparedness and the fire department was always
6 part of that thought process.

7 Q Would you agree with me that when we talk about the Liz
8 Stewart study, the command staff as a whole, including Chief
9 Jenkins was one of the things y'all wanted information in
10 that survey?

11 A I would agree that the fire department was a concern,
12 not just Chief Jenkins or the command staff. I think the
13 conduct in the fire department was concerning. There was
14 some behaviors that were not acceptable to me. And I don't
15 want to speak for the city manager or any other person in
16 the chain of supervision, but there were concerns that I
17 had. There was issues of morale. There was a concern for
18 the property that was fire department property, whether it
19 was real estate or whether it was vehicles.

20 So there were a number of things as a more direct
21 supervisor of the fire department that I saw long before the
22 Liz Stewart study. And again, we were working with and
23 through those things, but once we did the Liz Stewart study,
24 then it gave us more of a focus from the firemen themselves
25 to kind of look at things and see what they were.

1 Q Do you recognize this e-mail?

2 A Yes.

3 Q And that's the e-mail announcing the Liz Stewart &
4 Associates study?

5 A Yes.

6 Q Would you agree with me that that e-mail references
7 confidentiality and anonymity three times?

8 A Yes.

9 Q Would it have been reasonable in your mind for
10 employees who received this e-mail to have believed that
11 their confidentiality and anonymity was going to be
12 maintained?

13 A Yes.

14 Q When Ms. Stewart presented her findings in the report,
15 do you agree with me that at the time those findings and
16 report were presented, Aubrey Jenkins, the fire chief, was
17 present?

18 A Chief Jenkins was present at some points when we met
19 with Liz Stewart. I'm not remembering exactly when, whether
20 he was there every time we met. In fact, I doubt that he
21 was. I don't think he was, particularly initially. But he
22 was present at some meetings.

23 Q I think that's consistent with what you told me in your
24 deposition. You sure he was probably there for some of it,
25 but you don't think he was there for all of it; is that

1 correct?

2 A That's correct.

3 Q You would agree with me that if Chief Jenkins had heard
4 Mr. Edmonds raise the concerns he raised to Ms. Stewart, he
5 would have been able to deduce the concerns came from Mr.
6 Edmonds?

7 A I would guess so. I mean, I'm not -- I don't want to
8 speak for Chief Jenkins and how he deducted things.

9 Q Reverend Baker, I've handed you an e-mail marked
10 Exhibit 8; is that correct?

11 A Yes.

12 Q Do you remember what that is?

13 A Generally, I do.

14 Q Can you tell us generally what it is?

15 A It's a note from -- an e-mail from Chief Michael
16 Edmonds addressed to me. And it followed a meeting that I
17 had with him where I -- he laid out some concerns that he
18 had. My approach to listening to and solving problems, I'm
19 always open to listening, but when there's action that needs
20 to be taken, then I need documentation as to what it is that
21 has been presented to me. And this appears to me, and I'm
22 sure it is, the e-mail that he sent me documenting concerns
23 that he laid out to me.

24 Q And you had asked him to do that; is that correct?

25 A Absolutely, if I was to address those issues.

1 Q And he attached other e-mails to that e-mail, other
2 documents to that e-mail; is that correct?

3 A It references attachments.

4 Q Did you believe that Michael Edmonds was sincere in his
5 concerns?

6 A Absolutely.

7 Q What concerns did he express to you if you can
8 remember?

9 A I don't remember specifically. I know there was a
10 concern about recruitment classes. There was an issue of
11 his leave for training. Beyond that, I don't remember
12 exactly. As I said in my deposition, I left the city
13 December 1st of 2017 and I left my notes with the city.

14 Q I understand.

15 A And I do not want to guess at what was said.

16 Q That's fair. Do you think you shared this e-mail with
17 the attachments with Chief Jenkins?

18 A I do.

19 Q Was the e-mail marked confidential?

20 A It is marked confidential.

21 Q And your position, to summarize, is that you couldn't
22 do anything about it unless you talked to Chief Jenkins,
23 right?

24 A My conversation with Chief Edmonds was I cannot do
25 anything until I know and have documentation on what it is

1 that you're concerned about. So if you send it to me, that
2 means I will move forward and see if I can sort out and
3 resolve whatever issues that you present. So while it was
4 marked confidential, I can't imagine that Chief Edmonds
5 expected that I would keep it to myself.

6 Q After this, did Chief Edmonds attempt to have Mr.
7 Edmonds removed from his position?

8 A After the Liz Stewart report and we met, there was
9 discussions about making a number of changes as we sought to
10 improve to make a more effective and efficient organization.
11 So a number of changes were discussed. Chief Edmonds was
12 one of those changes.

13 Q You disagreed at that time with removing Chief Edmonds,
14 didn't you?

15 A Absolutely, I did.

16 Q And you disagreed because you found that nobody could
17 rebut his concerns; is that correct?

18 A I didn't believe that the concerns that were presented
19 had been properly addressed. And again, I don't remember
20 all of those concerns, but I felt they were legitimate. I
21 also felt that there were things that needed to be discussed
22 between Chief Edmonds and Chief Jenkins so that they could
23 resolve those issues and move forward.

24 Q And Reverend, you said we were discussing a number of
25 changes. Who is we, you and Chief Jenkins?

1 A Chief Jenkins, the city manager, HR director.

2 Q And Chief Jenkins didn't get specific with you about
3 where he wanted to move Michael Edmonds, did he?

4 A Not that I recall, but sometimes, I'm not -- again,
5 this memo did not start my issues of concern with the need
6 to improve the fire department. So I didn't really consider
7 any move other than the one that was made with Chief
8 Tinsley, even in my recommendation to the city manager.

9 So if that was in Chief Jenkins' mind to move, we
10 didn't talk about any specifics. I do know that Chief was
11 concerned, that he had lost some confidence in Chief
12 Edmonds. But I felt, again, this needed to be addressed and
13 they needed to spend some time together so that they could
14 move forward.

15 Q Sure. And when he talked about moving Chief Edmonds,
16 he didn't get as specific as we're moving him to another
17 station, another position or the unemployment line, did he?

18 A No.

19 Q But you agree with me that, ultimately, Chief Jenkins
20 had enough discretion to remove Edmonds on his own, correct?

21 A Chief Jenkins had the discretion to make changes in the
22 organization. At this point, I doubt seriously that he
23 would have made any changes without discussing those changes
24 before making them.

25 Q Do you recognize this document, this chain of e-mails?

1 A Could you ask your question again, please?

2 Q Sure. What is this document?

3 A It is obviously an e-mail that I sent to Chief Jenkins.

4 Q What's the date of the e-mail you sent to Chief
5 Jenkins?

6 A July 6th, 2017.

7 MR. PORTER: And before we get into the questions, Your
8 Honor, I think I've laid a foundation, I'd like to move this
9 in as Plaintiff's Exhibit No. 14, I believe without
10 objection.

11 MS. WILLIAMS: No objection, Your Honor.

12 THE COURT: Plaintiff's Exhibit No. 14 is introduced
13 without objection.

14 (Plaintiff's Exhibit No. 14 marked and received into
15 evidence.)

16 BY MR. PORTER:

17 Q Now, you agree with me, Reverend Baker, that you were
18 not, to your recollection, directly involved in the decision
19 to ask for Mr. Edmonds' resignation; is that correct?

20 A It's obvious that Chief Jenkins spoke to me about it.

21 Q And you can tell from this e-mail that as of July 6th,
22 2017 at 7:18 p.m. that Chief Jenkins had sent you a draft
23 termination letter; is that correct?

24 A I'm not sure what it was that he sent me.

25 Q Are you discussing what needs to be included in a

1 MS. WILLIAMS: May I approach, Your Honor?

2 THE COURT: Yes, you may.

3 Q And you testified that that e-mail is marked
4 confidential, correct?

5 A Yes.

6 Q When, if ever, did you represent to anyone that your
7 e-mails would be kept confidential?

8 A I did not.

9 Q When, if ever, did you represent to anyone that
10 communication within the city would not be subjected to the
11 Freedom of Information Act?

12 A I did not. I couldn't do that.

13 Q When you received that e-mail from Mr. Edmonds on June
14 2nd, 2016, what was your understanding as to why he sent the
15 e-mail to you?

16 A He was concerned about some issues and those issues, in
17 his mind, had not been addressed.

18 Q Now, you testified earlier that you're a leader who
19 listens to and solves problems?

20 A That's my job, yes.

21 Q Did you attempt to solve the issues that Mr. Edmonds
22 brought to your attention?

23 A Absolutely.

24 Q And what actions did you take?

25 A I spent some time at logistics talking to Chief

1 Williams to understand --

2 And let me back up. My responsibility was broader than
3 just addressing Chief Edmonds' issues. On a daily basis, I
4 was responsible for making sure that the fire department got
5 the support that it needed from me, from the city, from my
6 office, Counsel. Whatever they needed, it was my job to
7 help facilitate those things for Chief Jenkins and the fire
8 department.

9 Again, there were other concerns that had been raised
10 either by me or things that I saw about the condition of our
11 facilities. The issue of recruitment, I actually went with
12 Chief Jamie Helms to the training grounds to talk with the
13 training chief so that I could better understand the process
14 and what was taking place and how it was done.

15 So what was presented to me by Chief Edmonds was not
16 all that I had to look into and go on, but this was
17 something in my mind that needed to be addressed and I
18 needed to find out all that I could about it so that I then
19 could talk to Chief Jenkins and decide how to handle things
20 from there.

21 My conclusion was that these guys had been working
22 together forever. And Chief Jenkins was promoted to chief
23 and he was allowed to select his staff, his command staff.
24 Chief Edmonds was one of the people he selected. So while
25 some of the things that Chief Edmonds was concerned about

1 were not necessarily in his area, the way the fire
2 department operates, everything is woven together. You
3 cannot have training, a successful training program if the
4 suppression people are not involved. You cannot have safe
5 firefighters fighting fires if logistics and the equipment
6 that they need is not properly maintained and taken care of.
7 You cannot get to -- suppression can't get to a fire if the
8 trucks are not properly maintained.

9 So while there was things here that I felt needed to be
10 resolved, there were other things that needed to be
11 addressed as well. And I would say that while there were
12 some things that involved other areas that Chief Edmonds was
13 not responsible for, the 12 months following this, the 12
14 months following this, I didn't get a memo of concern about
15 the areas that he was responsible for and that he wasn't
16 getting support to improve those areas.

17 So my suggestion to Chief Jenkins from this was that he
18 sit with Chief Edmonds and you all work out your
19 differences.

20 Q And just so we're clear, when you say your response to
21 this, you're talking about the June 2nd, 2016 e-mail,
22 correct?

23 A Yes.

24 Q Can you tell us a little bit about some of your
25 concerns in the areas that did fall under Mr. Edmonds?

1 A Well, there's -- and, again, I had little notes for
2 everything, a little book for the fire department and
3 another book for another department, and I don't have those.
4 But as I recall, there was an issue with logistics. One of
5 the concerns was that it was not an adequate building. I
6 think that is what first brought me to that operation and to
7 walk through it and see how they operated.

8 I am one that believes that -- you know, we're in a
9 world of technology. And whatever technology would support
10 and help logistics be better was technology that we should
11 be using. So I was concerned that we were not as
12 technologically advanced in logistics as we should be. And
13 I, again, didn't have anything that said I would like to,
14 but money is a problem. I would like to and I don't get
15 support from some place. So from my perspective, that was
16 something that was under Chief Edmonds that I was concerned
17 about. Whether it was the before or after the Liz Stewart
18 report, I'm not really sure.

19 I've spent time at Station 2. There were a number of
20 issues at Station 2. I remember driving up and seeing a pan
21 under one of the fire trucks. Okay, so what's this pan
22 about? Well, there was a leak. So while the fire
23 department wasn't responsible, hands-on responsible for the
24 maintenance of the trucks, it was the fire department's
25 responsibility to make sure that they went to the shop and

1 that they were fixed. Again, I see that as one of the
2 issues that Chief Edmonds was responsible for.

3 In a number of stations, I would not have been
4 comfortable spending the night. And Station 9, I think, is
5 referenced in something that I saw, was one of those
6 locations that I felt needed to be improved in addition to
7 Station 2. That was the direct responsibility of Chief
8 Edmonds.

9 And I spent quite a bit of time at Station 2 over the
10 course of several months. Money was not an issue. Money
11 was moved to do certain things. And for me, it took too
12 long to take care of those things. I wanted the firemen who
13 lived there to be well aware of what we were doing. And on
14 a number of occasions, I asked questions, do you know why we
15 were there? They'd say, Nobody is talking to us. Well, my
16 directive was that you keep everybody informed.

17 There are some things that the general services was
18 responsible for, but there were other things that the fire
19 department -- Chief Edmonds should, in my opinion, have been
20 taking care of, decent lockers, bedding, lounge chairs that
21 were sanitary, floors that were clean, good, decent office
22 furniture. I didn't see those things. And again, from my
23 perspective, that was the responsibility of Chief Edmonds.

24 So while I don't remember a lot of things, I don't have
25 notes for things, but I do know from an assistant city

1 manager's standpoint, from June 2nd of 2016 to July of
2 2017 -- in June of 2016, I was not willing to agree with any
3 move with Chief Edmonds. But 12 months later, I experienced
4 a number of things that would have me saying Chief, you do
5 what you think is best for your department because you are
6 -- Chief Jenkins, because you are, ultimately, responsible
7 for what happens here.

8 Q Now, Plaintiff counsel also showed you another e-mail,
9 Exhibit 14, Plaintiff's 14. Do you have that?

10 A I do.

11 Q And you testified that you were familiar with that
12 e-mail. If you look at Page 2 of that e-mail --

13 A Well, honestly, ma'am, I did not remember this e-mail
14 until it was shown to me again. I don't have files or
15 notes, but I don't doubt that I sent it.

16 Q Okay. If you look at Page 2, will you please read the
17 sentence that you wrote on Page 2 beginning with there?

18 A There is much evidence to support the ineffectiveness
19 of Chief Edmonds, however, I would prefer that his
20 separation be kept as simple as possible from our
21 perspective.

22 MS. WILLIAMS: Your Honor, may I have a moment to
23 confer with my cocounsel?

24 THE COURT: Yes, you may.

25 (Pause.)

1 MS. WILLIAMS: No further questions.

2 THE COURT: Any redirect?

3 MR. PORTER: Briefly.

4 REDIRECT EXAMINATION

5 BY MR. PORTER:

6 Q You mentioned responsibility, his responsibility or
7 authority. Just to clarify, Chief Edmonds did not have the
8 authority to order that buildings be fixed on his own or
9 that vehicles be fixed on his own, correct?

10 A He had the responsibility to request that they be fixed
11 and he had the responsibility to followup and ensure that it
12 happened. And if it did not happen, he had a responsibility
13 to do what he did here.

14 Q Yes, sir. One of the concerns -- well, first, I guess
15 let's lay the foundation. You received the consultant's
16 study? You were briefed on it, correct?

17 A Yes, sir.

18 Q One of the concerns that was talked about in the
19 consultant study was that everything had to be approved by
20 the chief such that nothing could get done, was it not?

21 A That was an inference, I believe.

22 Q Okay. There was concern expressed in the study, was it
23 not?

24 A Yes.

25 Q Ms. Bennett-Williams read you your e-mail when you said

1 there was sufficient evidence to support Mr. Edmonds'
2 separation. If I understand your testimony, you don't have
3 any of that evidence because everything you had is back with
4 the city, correct?

5 A Everything I had was left with the city. Whether it's
6 back there or not now, I don't know.

7 Q But you would expect them to have that?

8 A Yeah, some of it. Memos like this, files, yes. My own
9 personal notes, I doubt that they -- they may or may not,
10 but as I left office, those things that were personal, I
11 took them with me. Those things that were not, I either
12 trashed or left in the office.

13 Q But you didn't take any of that evidence with you?

14 A No.

15 MR. PORTER: Thank you.

16 THE COURT: Any recross?

17 MS. WILLIAMS: No, Your Honor.

18 THE COURT: Thank you.

19 Reverend Baker, you can step down. Thank you.

20 THE WITNESS: Thank you, sir.

21 (Witness steps down.)

22 THE COURT: Mr. Porter, call your next witness.

23 MR. PORTER: Your Honor, may we approach?

24 THE COURT: Lawyers approach.

25 (Bench conference.)

1 THE WITNESS: My name is Steven Brantley Hanna.

2 DIRECT EXAMINATION

3 BY MR. PORTER:

4 Q Mr. Hanna, tell us a little bit about yourself, where
5 you're from, what do you do, that sort of thing?

6 A My name is Brantley Hanna. I live in Blythewood. I've
7 been in Columbia my whole life. I own a landscape firm
8 right now. I'm retired from the City of Columbia with the
9 fire department. I retired in April of 2017. Great career,
10 loved it. I have a wife, four daughters, so a little busy.
11 I think that's about it.

12 Q What was your final rank at the fire department?

13 A My final rank was battalion chief.

14 Q We've probably talked about that, but just refresh us
15 and tell us what that means.

16 A As my role as battalion chief, there are five battalion
17 chiefs each day over three different days. There's three
18 different shifts. As a battalion chief, I had six fire
19 stations. I was the downtown battalion chief, so if
20 something happened in this building, I would have been
21 responding here and managing companies by radio outside. I
22 managed six companies about anywhere from 28 to 30 guys.
23 And then there was five in my position each day.

24 Q How often did you have the opportunity to work with
25 Michael Edmonds during your tenure?

1 A During my tenure, a good bit at different times as our
2 positions were not the same throughout our history and, you
3 know, we were on different shifts. By the time I started
4 climbing the ladder, he had made it upstairs. But a good
5 bit.

6 Q How would you describe Assistant Chief Edmonds, or
7 Michael Edmonds as a worker?

8 A I think he's a hard worker, real hard worker, very
9 detailed, you know, very focused on whatever task he was
10 given.

11 Q Was he good at his job?

12 A I think that's a great question. I think it's a tough
13 question. When we're talking about good at his job, there's
14 so many different jobs that we were doing. And the last job
15 that he had, you know, if he did any purchasing, he's
16 purchasing items that we used at the fire department and
17 you're purchasing those for 600 different people. It's
18 tough for me and my family of six to determine where we're
19 going to eat on Friday night, so how to make all those 600
20 people -- you know, the 450 active, the 150 volunteer
21 fireman, how do we make all those happy? Then you've got
22 people grumbling, you've got people not happy. So I'm sure
23 there were mistakes made, sometimes I was frustrated over
24 things and then I saw a lot of great things as well.

25 Q How would you say he treated his job?

1 A How did he treat his job?

2 Q Yes, sir.

3 A I thought he treated it pretty serious. I think he was
4 very active at his job. And again, that's at different
5 levels because the first time we had contact was when he was
6 a captain, which is about three or four positions below what
7 he is now when he was an assistant chief. I think he was
8 very serious with his job. I think he was very professional
9 or he wouldn't have been able to climb to the rank that he
10 was.

11 Q How would you describe his character as to honesty and
12 truthfulness?

13 A I think his character for honesty and truthfulness is
14 extremely high. I think his character is very high. I
15 think he's very honest, so much that it's a brutal honesty.
16 So with that, sometimes that is a negative on people. A lot
17 of times, people don't want to hear the brutal truth and
18 he'll give it to you.

19 Sometimes with that, on the social side, I feel like he
20 was lacking sometimes on a social side. And a lot of the
21 guys -- you know, we're talking about a lot of different
22 members of the fire department didn't take that well.
23 Although it was the truth, although it was good information,
24 the tactfulness sometime was not there quite as much.

25 Q When did you retire?

1 A I retired in April of 2017.

2 Q Was Assistant Chief Edmonds there when you left?

3 A He was.

4 Q How did you come to find out about his separation?

5 A He actually called me on the way home from the fire
6 department and let me know what had just happened. And it
7 shocked me. When I was on the phone, he was -- I just think
8 he needed somebody to talk to. He was on the way home to
9 his family and pretty emotional, pretty surprised, pretty
10 shocked. You know, I usually have something to say about
11 anything. I didn't have too much for him other than I was
12 sorry and I'd check on him tomorrow. Tough phone call.

13 Q Do you remember a time when a third-party survey was
14 conducted at the fire department?

15 A I do.

16 Q How was that survey supposed to be conducted with
17 respect to confidentiality?

18 A It was supposed to be extremely confidential. And
19 that's one thing -- the survey for me when I went in was
20 done by the owner of the company. It was a female, very
21 professional. And she spoke about confidentiality and that
22 it had to be that way. And I specifically asked her on my
23 interview because I've always been open and honest, I said,
24 If there's any way to do it, I want my name on my interview.
25 I want them to know the answers I'm choosing. And she said,

1 We can't do that. It has to be conducted in a confidential
2 way. So exactly opposite, said she had to.

3 Q Do you recall the press and the news media after your
4 separation about Mr. Edmonds?

5 A There was an independent guy who was doing some -- I
6 say independent guy, not a regular news station that was
7 doing some stories. And he'd come across -- just have some
8 basic information and whatever the hot topic was, I call it
9 hot topic, whatever the juicy information on the rumor mill
10 was, he'd put that out.

11 Q And we're not going to go too far into detail, we're
12 going to move on from that. Let me ask you about the status
13 of the buildings. Was Edmonds responsible for the status of
14 buildings being in disrepair, such as Station 9 and Station
15 2?

16 A Well, Station 9 was in my battalion, so I was dealing
17 with that issue when -- you know, during the time before I
18 left. And Station 9 -- the question is, he would be our
19 representative to kind of handle issues out of Station 9.
20 The last thing I got when we were dealing with -- because we
21 had a major leak that was going into the showers. It was
22 causing all kind of problems. And then there were a lot of
23 issues with the fireman over that.

24 But the information I got is that is it's just being
25 forwarded to the city. That they're city buildings and

1 they're handled by city people. You know, it's just another
2 line of information that takes a long time to get happening.
3 It's not like you just call the electrician or the plumber
4 and say hey, get out there. It has to go to this person,
5 this person, then we get a PO and it goes to this person.
6 And while it takes a while, the fireman are getting
7 frustrated because they expect it to get done five minutes
8 ago.

9 So their expectation is that he was the one that
10 handled everything, so they were frustrated with his name.
11 Again, some his previous tactfulness may be with them. I
12 knew a lot about it because Mr. Baker, Allison Baker, who
13 was assistant city manager would be over there many times
14 without me even knowing he was there. I would find out
15 afterwards dealing with some of our guys. I'd find out
16 after he'd had a meeting.

17 Q You mentioned the article earlier and I'm going to ask
18 you a very specific question about that. Did you feel like
19 the article was talking about Mr. Edmonds?

20 A Specifically.

21 Q Let me ask you about the circumstances with you when
22 you left the city. Are there particular processes that are
23 followed when an employee leaves the city?

24 A There is, it's called an exit interview. You want me
25 to go on further on that?

1 Q Yes.

2 A The exit interview just gives you the opportunity to
3 talk with your boss, normally, the department head, and this
4 time, it's Chief Jenkins. I had a great relationship with
5 Jenkins, I feel like I still do and consider him a friend,
6 but I've shared in my position many times with him
7 frustrations I had with the city, frustrations we had on
8 many of the issues that I wanted to get addressed, and this
9 is for many years.

10 And so I didn't feel -- along with another individual
11 that was retiring, we asked for an exit interview with the
12 city manager, Ms. Wilson, the assistant city manager, Mr.
13 Baker, and Ms. Benjamin, who was over human resources. We
14 thought maybe we could get some extra stuff out there just
15 to kind of enlighten them. And that's normally not an
16 interview I'd ever be able to have as a worker. And when
17 leaving, I'd have that opportunity.

18 Q Who was the friend that asked for that exit interview
19 with you?

20 A It was Robert Joyner.

21 Q And he's also battalion chief?

22 A He is.

23 Q So y'all request this exit interview with the city
24 manager, senior assistant city manager and Ms. Benjamin in
25 HR. What happens next?

1 A They gave us the chance to speak to them. And it
2 wasn't a time just to kind of dog our staff or anything. We
3 had some frustrations with some of the members of our staff,
4 some of the jobs that were happening, but just all in all
5 many things. We were granted that opportunity. Some of the
6 subjects we wanted to talk about was a waste of money. We
7 wanted to talk about a lack of any kind of cohesiveness with
8 the command staff, the whole entire command staff, not one
9 individual. Many issues with all of them. And then also
10 some procedures and systems that were never in place that we
11 thought would really help out the city. But, specifically,
12 a lot about the money that's being wasted all over.

13 But they granted that. We went into a meeting. We had
14 Ms. Wilson on the left, Ms. Benjamin, who was across from
15 us, and then Mr. Baker that was on the right. All of them
16 had little notes. We had a very cordial conversation. It
17 was private in a room up at City Hall. And they allowed us
18 to talk. It was a little bit over about an hour meeting
19 altogether. After about 30 minutes, Ms. Benjamin left to go
20 a previous meeting that she already had scheduled.

21 Ms. Wilson seemed to be really interested in all the
22 stuff we had to say and had good conversation with us about
23 the stuff. She could tell we were serious and that we loved
24 the city and that it was only to try to help.

25 Mr. Baker, I remember specifically interrupting four

1 different times whatever we were talking about. If we were
2 talking about work, if we were talking about money, if we
3 were talking about ice cream, he would always interrupt to
4 go back to something about Chief Edmonds. He was like,
5 well, can you take me back -- tell me about this thing with
6 Chief Edmonds. I want to put a hold on that right, whatever
7 we were talking about, can you tell me about Chief Edmonds
8 and Station 9? Can you tell me about Chief Edmonds and --
9 but it was specifically about Station 9, that building, but
10 four interruptions. So it led me to believe he wasn't
11 writing anything else down.

12 Q And that was around April of 2017?

13 A It was the Monday -- I can get you a specific date. It
14 was the Monday after I retired on Friday. It was the Monday
15 after we had an awards ceremony.

16 Q When did you retire?

17 A I retired on that Friday. A specific date, I don't --

18 Q It was in April?

19 A Yes, sir. It was one day after I retired and it was
20 one week before my colleague was to retire, two weeks before
21 he was to retire.

22 MR. PORTER: Thank you, sir. Nothing further.

23 THE COURT: Ms. Williams.

24 CROSS-EXAMINATION

25 BY MS. WILLIAMS:

1 Q Good afternoon, Mr. Hanna.

2 A Hey, how are you?

3 Q I'm good. How are you?

4 A Doing good.

5 Q Mr. Hanna, you've known Mr. Edmonds for several years,
6 correct?

7 A Yes, ma'am.

8 Q And you've stayed in touch with each other since your
9 retirement from the City of Columbia, correct?

10 A Yes, ma'am.

11 Q And you've stayed in touch with him since his
12 separation from the City of Columbia Fire Department,
13 correct?

14 A That's correct.

15 Q So do you consider him a friend?

16 A I do consider him a friend. No different than any
17 other member in this room probably that has on that uniform.
18 I've stayed in touch with several members of them. I know
19 where we're leading to because our friendship might do
20 something different, but I'm friends with every one of them
21 and got texts and communicate with them and got them in my
22 cell phone.

23 Q Okay. So you testified that in your experience, while
24 Mr. Edmonds was working for the fire department, you said
25 that he was a hard worker?

1 A Yes, ma'am.

2 Q You said that he was very professional, correct?

3 A Yes, ma'am.

4 Q You said that he was honest?

5 A Yes, ma'am.

6 Q And you said that he was truthful, correct?

7 A Yes, ma'am.

8 Q Now, do you frequently read the Quorum blog?

9 A The former blog is what we were speaking of earlier
10 when some of that information came out from one of the
11 individuals, the gentleman -- I read two of them. There was
12 one you had to buy and get a subscription to and I did not
13 read that one.

14 Q So you only read two articles of the Quorum?

15 A Well, at least, two of them. I just remember there was
16 one that I wasn't going to pay for to read because I thought
17 it was a lot of nonsense.

18 Q Okay. And do you frequently read this blog or did you
19 just read it for the purpose --

20 A Absolutely not. No, I don't like to read.

21 Q Okay. So after reading the blog, do you still consider
22 Mr. Edmonds a truth person?

23 A I do.

24 Q Do you still consider him a hard worker?

25 A I do.

1 Q Do you still consider him very professional?

2 A Yes, ma'am.

3 Q And do you still consider him honest?

4 A I do.

5 MS. WILLIAMS: No further questions.

6 THE COURT: Any redirect?

7 MR. PORTER: No, Your Honor.

8 THE COURT: Mr. Hanna, you can step down. Thank you.

9 (Witness steps down.)

10 THE COURT: Mr. Porter, call your next witness.

11 MR. PORTER: The Plaintiff calls Robert Joyner, Your
12 Honor.

13 ROBERT JOYNER, after being duly
14 sworn, testified as follows:

15 THE CLERK: Thank you. Have a seat in the witness
16 stand, please. State your name for the record.

17 THE WITNESS: Robert Joyner.

18 DIRECT EXAMINATION

19 BY MR. PORTER:

20 Q Mr. Joyner, tell us a little bit about yourself, where
21 you're from, what you do, that sort of thing.

22 A I live in Camden, South Carolina. I recently retired
23 from the fire department. I spent 26 years in the fire
24 service, 20 great years with the City of Columbia. I've got
25 a wife and two children. And I currently travel all around

1 teaching people how to cut people out of cars with jaws of
2 life. That's what I do everyday. Still in the fire
3 service.

4 Q When did you come to the City of Columbia?

5 A In March of '97.

6 Q And when did you retire from the City of Columbia?

7 A In May of 2017.

8 Q And what rank were you when you came on?

9 A Battalion chief.

10 Q What rank were you when you came on?

11 A Oh, on? Firefighter.

12 Q And your final rank was battalion chief?

13 A Yes.

14 Q Now, we've gone through deposition a few times before,
15 so I'll just summarize it as this, you supervised
16 approximately 30 employees across several fire stations in
17 the city and county from captain down?

18 A Yes, 'sir.

19 Q How did you come to know Michael Edmonds?

20 A Throughout my career. When I came in, I think Chief
21 Edmonds was a captain at that point. So I just worked with
22 him on several things throughout my career.

23 Q How would you describe Michael Edmonds?

24 A Hardworking, honest. Whatever task you gave him, he
25 was going to pour everything he had into it and make a lot

1 of things happen.

2 Q Do you remember when an assessment was performed by
3 Stewart & Associates at the fire department?

4 A Yes, I do.

5 Q And how did you come to learn about that assessment?

6 A E-mail, you know, this is what's going on. We've got
7 to go in and go through this interview process, not a lot of
8 details.

9 Q Was it your understanding that process was supposed to
10 be confidential?

11 A Yes.

12 Q Did you take Ms. Wilson's e-mail at her word?

13 A Yes.

14 Q Now, do you remember shortly after you left there being
15 some media attention on the fire department with respect to
16 Michael Edmonds?

17 A Yes, there was.

18 Q How did you come to find out about Michael's separation
19 from employment?

20 A Somebody had just called me. I did not talk to Chief
21 Edmonds directly. I don't know if it was Brantley or
22 somebody else that had told me what had happened, you know,
23 he had left the fire department.

24 Q Did you know why?

25 A No, I still don't know today exactly why.

1 Q Were you given any ideas of why?

2 A Rumors and speculation, which were constant within the
3 fire department. To give you a true factual, I can't really
4 give you that. I can give you a whole bunch of rumors.

5 Q What rumors did you hear?

6 A Some gloves issues, station issues, some other things
7 that were going around. But as far as factual, I don't have
8 any facts.

9 Q Did you have any firsthand knowledge of any of those
10 issues, the gloves, the stations?

11 A I worked on a lot of projects with Chief Edmonds
12 throughout the latter part of my career. Not a lot really
13 with the stations, but I was involved with a lot of
14 equipment purchasing. I did do some work on gloves and some
15 glove studies several times in my career.

16 Q Was there any issue that you remember with the glove
17 study, problems with the Honeywell Super glove?

18 A No, no issues with Honeywell.

19 Q Have you ever used the Honeywell glove?

20 A I retired wearing that glove.

21 Q Is it a good glove?

22 A I think it's a great glove.

23 Q Why did you leave the city?

24 A Another opportunity and my time was there.

25 Q And you did your exit interview with Brantley Hanna,

1 city manager, senior assistant city manager and HR's, Pam
2 Benjamin?

3 A I did.

4 Q As it pertains to Mr. Edmonds, tell us about those
5 interviews.

6 A It seems there was a lot of questions about Chief
7 Edmonds' involvement in different things. And like Brantley
8 said and I'll say it as well, our goal was more of a
9 city-wide. It wasn't really about one person, but we did
10 get a lot of feedback questions about Chief Edmonds. So it
11 wasn't about one specific individual. It was about
12 processes within the city that we were looking at, but a lot
13 of questions came back about Chief Edmonds.

14 Q Who was that from?

15 A Mr. Baker mostly.

16 MR. PORTER: Thank you, sir.

17 THE COURT: Ms. Williams.

18 CROSS-EXAMINATION

19 BY MS. WILLIAMS:

20 Q Good afternoon, Mr. Joyner.

21 A Good afternoon.

22 Q You testified that you were aware of the study that was
23 done on the Honeywell Super glove, correct?

24 A Yes, ma'am.

25 Q And are you aware that that study was done five years

1 prior to the purchase of those gloves?

2 A Yes, ma'am.

3 Q Would you agree that technology changes in a five-year
4 period?

5 A Yes, ma'am.

6 Q Would you agree that safety requirements change within
7 a five-year period?

8 A Yes, ma'am.

9 Q Were the firefighters to your knowledge fitted for the
10 gloves before they were purchased?

11 A Not before they were purchased, but we've never fitted
12 anybody for gloves in the fire department before we
13 purchased them before.

14 Q And you had no concerns about the fact that no one was
15 fitted for the gloves prior to purchase?

16 A No, we'd never done a fitting on gloves in my 20-year
17 year career there.

18 Q Okay. At some point, did you go to lunch with Chief
19 Jenkins prior to you leaving the fire department?

20 A I had lunch with Chief Jenkins several times. I mean,
21 I consider him a really good friend.

22 Q And you also testified that you considered Mr. Edmonds
23 a hard worker, correct?

24 A Yes, ma'am.

25 Q Do you still consider him a hard worker?

1 A I do.

2 Q At one of those lunches with Chief Jenkins, did you
3 tell Chief Jenkins that Edmonds has to go?

4 A I don't know that I said it maybe in that point, you
5 know, has to go, but there were changes that were necessary.
6 I think we all would agree on that. There were changes that
7 were necessary within the structure of the organization.
8 So, you know, can I tell Chief Jenkins to fire somebody, no.
9 But were there things that needed to be addressed,
10 absolutely, there were things that needed to be addressed in
11 every position in the organization.

12 Q But specific to Mr. Edmonds, did you tell Chief Jenkins
13 that Edmonds has to go?

14 A I can't recall telling him exactly that he had to go.

15 Q Did you tell him that there were some issues with Chief
16 Edmonds that needed to be addressed?

17 A Yes, ma'am.

18 MS. WILLIAMS: Thank you. No further questions.

19 THE COURT: Thank you.

20 Any redirect?

21 MR. PORTER: Very briefly.

22 REDIRECT EXAMINATION

23 BY MR. PORTER:

24 Q At this time, 2016-2017, in your opinion, were there
25 issues with the whole command staff?

1 A Yeah, I think there were directional issues that needed
2 to be addressed, but I think those things are pretty
3 constant when you're dealing with an organization that big.
4 So yes, there were issues within the organization that
5 needed to be addressed.

6 MR. PORTER: Thank you, sir.

7 THE COURT: Anything further?

8 MS. WILLIAMS: Nothing further.

9 THE COURT: Thank you, Mr. Joyner. You can step down.

10 (Witness steps down.)

11 THE COURT: Mr. Porter, call your next witness.

12 MR. PORTER: Yes, Your Honor. The Plaintiff calls
13 Kimberly Edmonds.

14 KIMBERLY EDMONDS, after being duly
15 sworn, testified as follows:

16 THE CLERK: Thank you. Have a seat in the witness
17 stand, please. State your name for the record.

18 THE WITNESS: Kimberly Edmonds.

19 DIRECT EXAMINATION

20 BY MR. PORTER:

21 Q Ms. Edmonds, start off by telling us a little bit about
22 yourself, where you're from and that sort of thing.

23 A I grew up in Greenville. I came to Columbia to go to
24 Columbia College, graduated and made this my home. I am
25 married to Michael. We have two daughters. I currently

1 work at the post office, I deliver the mail.

2 Q How did you meet Michael?

3 A When I was in school at Columbia College, as part of my
4 degree, I had to do an internship. I did that at R. J.
5 Reynolds Tobacco. And after I graduated, I got hired by
6 them, also. And he came to work at R. J. Reynolds Tobacco
7 installing in the merchandising racks and that's where we
8 met.

9 Q When was that?

10 A Probably July of 1992.

11 Q And when did y'all get married?

12 A January 27th, 1996.

13 Q How would you describe Michael's attitude working at
14 the fire department during your marriage?

15 A When we got married, he loved his job. He was proud to
16 be a firefighter. He really enjoyed doing demonstrations
17 for kids and showing them the truck and whatnot. As he got
18 promoted to the command staff, it was clear that he wasn't
19 necessarily enjoying it like he had before. It became
20 stressful and burdensome.

21 Q How much would you say the job was a part of his life?

22 A When you're a firefighter, your job is your life.
23 You're either at the fire department, going home from the
24 fire department or you've got to go to the fire department
25 the next day. Once he got promoted, you would think that he

1 would have -- you know, the demand would have been less
2 because he was home every night. Up until then, he had been
3 gone every third night. But it became -- it completely
4 encompassed our life because he was on call 24/7. He drove
5 a city vehicle because if any call came in at any time
6 during the day or night, he had to go, you know, if it was
7 something that he needed to respond to. He had his
8 walkie-talkie on 24/7, which sat on our nightstand and woke
9 not only him up, but me up every night. So it completely --
10 it is your life.

11 Q Now, beyond kind of routine administrator-type stress,
12 was there a change in what you observed in Michael's
13 attitude as he moved toward the end of his employment?

14 A Yes. I mean, it wasn't necessarily a stress of the job
15 because he was completely competent and capable of doing his
16 job. It was a burden he carried that things weren't being
17 done correctly necessarily or needed attention that the lack
18 of communication and lack of direction made it impossible to
19 get done.

20 Q Do you have an independent recollection when the
21 department wanted a department-wide survey?

22 A I do.

23 Q How was the stress level at that time?

24 A It was very high. He was very concerned about how to
25 respond. Not necessarily how to respond, but whether it

1 would be kept confidential, if it would have an impact on
2 his career if it wasn't kept confidential. So yeah, it was
3 very stressful and he worried about it a lot.

4 Q As the survey came to a close and we move into the
5 summer of 2016, did his attitude change?

6 A It only got worse. It went from stress and worry to
7 stress and worry and whatever else you could add on top of
8 that.

9 Q Now, jumping ahead to July of 2017 when he's asked to
10 resign, describe him at that time.

11 A He was broken. When you're a firefighter -- these are
12 people he had worked with for 30 years, people you trust
13 your life with because you're going into a burning building
14 with them. And he felt like that trust had been broken.

15 When he was asked to resign, he was driving a city car
16 at the time because he was on call 24/7. So the morning he
17 was asked to resign and needed to leave, he couldn't leave
18 because he didn't have a vehicle. And so he was left to
19 walk down the streets of Columbia humiliated waiting on me
20 to come pick him up. So not only had he lost his job, but
21 he was humiliated. He had lost a means to provide for his
22 family. And it was an awful situation.

23 Q How did it affect you?

24 A Well, you can only imagine. I mean, he's got these
25 feelings of not trusting the people he had worked with for

1 30 years, not feeling respected. And all these negative
2 feelings come out as anger. And when you're the only one
3 around, you know, your family is the target of that. It's
4 hard. It's very hard.

5 Q Has he gotten better?

6 A Absolutely not. It went from stressful prior to the
7 independent study they did to worse after that. And since
8 he was asked to resign, he has steadily unraveled.

9 Q Where is he living?

10 A At the beginning of this year, he moved out. He lives
11 in our garage apartment, which I'm thankful that we have.
12 So yeah, it continues to unravel.

13 Q So right beside the house?

14 A Correct, right beside the house.

15 Q What role, in your opinion, do you believe his leaving
16 the city played in all of that?

17 A 100 percent. Every marriage has its problems. We, by
18 no means, had a perfect marriage, nobody does, but we were
19 always able to work through our problems. But the stress
20 this has caused has caused our marriage to completely
21 unravel. You know, this was a man that would walk into a
22 burning building to save any one of y'all, that was a career
23 he chose. And right now, he's having a hard time stepping
24 up to save his family.

25 MR. PORTER: Thank you.

1 THE COURT: Ms. Williams.

2 CROSS-EXAMINATION

3 BY MS. WILLIAMS:

4 Q Good afternoon, Ms. Edmonds.

5 A Good afternoon.

6 Q You testified about your husband's inability to obtain
7 income, correct?

8 A No. I said that the way -- his ability to provide for
9 his family the way he had had been taken away.

10 Q Had been taken away. But he still received a
11 retirement check, correct?

12 A Yes, he does.

13 MS. WILLIAMS: Thank you.

14 THE COURT: Anything further, Mr. Porter?

15 MR. PORTER: No, sir.

16 THE COURT: Ms. Edmonds, you can step down. Thank you.
17 (Witness steps down.)

18 Mr. Porter, call your next witness.

19 MR. PORTER: Your Honor, at this time, the Plaintiff
20 rests.

21 THE COURT: Ladies and gentlemen, when the Plaintiff
22 states that he's resting his case, that's all the evidence
23 that he intends to introduce at this time. There are going
24 to be some issues that we'll need to take up outside of your
25 presence, so this break may be somewhat lengthy. We'll be

1 working while you're out. Just make yourself at ease and
2 we'll have you back in here when we resolve those legal
3 issues.

4 So with that, you're allowed to go to your jury room.
5 Select a foreperson from among yourselves. And that
6 foreperson, write your name and number on a piece of paper,
7 hand it to the bailiff. And when you come back in, keep
8 this front seat.

9 Again, even though the Plaintiff has rested, you're
10 still not permitted to discuss the case at all. Again, I
11 remind you your discussion of the case begins at the end of
12 the case when all of the evidence is in and the Court has
13 given you the charge on the law and the lawyers have had an
14 opportunity to address you for a final time. So again, no
15 discussions.

16 With that, allow the jury to retire to the jury room.
17 Everyone else remain seated.

18 (WHEREUPON, the jury exits the courtroom at 2:36 p.m.)

19 THE COURT: Ms. Williams or Ms. Thye, I believe you
20 indicated at this time, you would have some motions.

21 MS. THYE: Thank you, Your Honor.

22 Beg the Court's indulgence a little bit. The motions
23 will be a little bit lengthy because I'm going to go through
24 each of the causes of action. I'm going to start with what
25 I think is the simplest one in terms of the lack or failure

1 or proof in the particular case and evidence before the
2 Court.

3 Your Honor, he has brought -- and I think although it's
4 an equitable remedy, you know, I think, certainly, at this
5 time, it is still appropriate for us to indicate that he
6 hasn't proven his case at all in the promissory estoppel
7 argument. As the Court is well aware, promissory estoppel
8 requires an unambiguous promise by the city that was
9 reasonably relied on by the Plaintiff, that reliance was
10 expected and foreseeable by the city, and the Plaintiff was
11 injured in reliance on that promise.

12 Your Honor, while I certainly would agree that the
13 second prong of that, the reliance was expected and
14 foreseeable by the city, there was testimony that Ms. Wilson
15 expected folks to rely on the promise of confidentiality in
16 that study and it was foreseeable by the city that they
17 would come in and discuss that study.

18 Your Honor, it is inescapable, however, that
19 Plaintiff's reliance on that promise was not reasonable
20 under these circumstances. There is evidence in the record
21 in the Plaintiff's own case in chief where as early or as
22 far, depending on how you want to look at it, from the
23 survey as a year, 2015, the e-mails starts where he is
24 telling his command staff, Jenkins and Tinsley, the same
25 issues that he testified he then told Liz Stewart. Those

1 issues of staffing problems, those issues of overtime usage,
2 of recruit issues.

3 He then tells Liz Stewart of those concerns. He then,
4 perhaps, has a fear that that confidentiality won't be
5 maintained. He then sends an e-mail to Ms. Wilson, that is
6 in evidence, where he recites the same concerns. Basically,
7 shares with her what he has shared with Ms. Stewart. And
8 then volunteers that I'll tell other folks. He then sends
9 the same information to Mr. Baker.

10 So we have heard in the Plaintiff's case that the year
11 prior to this survey, he was mentioning these same concerns.
12 After the survey, he mentions the same concerns. Your
13 Honor, that simply cannot be a reasonable reliance on the
14 promise of confidentiality if he, himself, violated it years
15 before and subsequent.

16 The second issue that he can't, I think, get over in
17 that case is that he was injured by that reliance. There's
18 no evidence in the record that his reliance on the promise
19 of confidentiality was what, ultimately, caused his
20 separation from employment. Because, quite frankly, he had
21 already divulged that information to other folks. It could
22 not have been the lack of confidentiality when many people
23 knew that same information from his own lips a year before
24 and subsequent to the survey.

25 So even if you get to the unambiguous promise by the

1 city and foreseeability, you cannot get to the reasonable
2 reliance on that promise or the connection between that
3 promise and his injury. And those things are required in a
4 promissory estoppel case and he has the burden to prove
5 those things. Having failed in that burden, I think a
6 verdict in our favor is inescapable under that cause of
7 action itself.

8 THE COURT: All right, if we're going to take them one
9 at a time, that's a great way to do it, let's let Mr. Porter
10 deal with them one at a time as well.

11 Mr. Porter, I'll be glad to hear you on the motion for
12 directed verdict as to the promissory estoppel.

13 MR. PORTER: Yes, Your Honor. And I'll be exceedingly
14 brief on this one because I think there's three key points
15 to refute what's been said.

16 First off, that there wasn't reasonable reliance based
17 on the fact that he had done this before. The kicker here,
18 and Mr. Edmonds talked about it and I believe some other
19 witnesses talked about it as well, is this was going outside
20 of the chain of command. The fire department treated its
21 chain of command very seriously. So this did make his
22 reliance reasonable. This was different than his internal
23 complaint.

24 Next, I would point you to the legal authority Bishop
25 V. The City of Columbia case. There was a Court of Appeals

1 decision in 2016, I believe. In that case, the court noted
2 that oral representations -- there was a triable issue on
3 whether or not oral representations could be reasonably
4 relied on. And it also notes in dicta, if you will, in
5 deciding some other issues on contract that the city manager
6 is authorized to make promises on behalf of the City of
7 Columbia.

8 And last, the injury, we think there is substantial
9 record evidence that Michael Edmonds was terminated because
10 of the broken promise of confidentiality and anonymity. I
11 think the first place the Court can look for it is Reverend
12 Baker's testimony. He testified that right after their
13 discussion, right after the Liz Stewart's study, where Chief
14 Jenkins, according to Reverend Baker, is in the room, Chief
15 Jenkins wants to get rid of Michael Edmonds.

16 So then we look at why he was terminated. We think we
17 put forth sufficient evidence of what employment lawyers
18 call pretext, meaning the reason for his termination, that
19 he was somehow lacking isn't the real reason. Here you have
20 an exhibit in front of you that, indeed, Mr. Edmonds was
21 cleared of the glove issue. And we think the testimony is
22 pretty compelling that he wasn't the responsible party for
23 the facilities issues, such that when you look at that
24 pretext and the Court must next surmise what was the real
25 reason. Here, we go back to the broken promise and Chief

1 Jenkins' attempt to terminate Michael Edmonds at the wake of
2 it and a year later, he finally had what I call cover or
3 pretext for that decision. Thank you.

4 THE COURT: Thank you.

5 And I'll hear you briefly if you have something in
6 response on the promissory estoppel.

7 MS. THYE: I do very quickly. The concept of
8 promissory estoppel, quite frankly, is does the refusal to
9 apply promissory estoppel work an injustice or a fraud in
10 the area? The whole reason behind promissory estoppel and
11 the ability of it is because there isn't a remedy some place
12 because he doesn't have some place else.

13 The cases are clear, in the Craft vs. The South
14 Carolina Commission for the Blind case, it says if the
15 injury would have happened independently from the promise,
16 then promissory estoppel doesn't provide the remedy.

17 So in this circumstance, this is not a failure to
18 invoke promissory estoppel would lead to some injustice or
19 fraud on the part of Mr. Edmonds. He, obviously, has a
20 remedy and he is pursuing that remedy. So promissory
21 estoppel is not the right cause of action.

22 THE COURT: Thank you. Let's move to your next.

23 MS. THYE: Your Honor, the next matter is switching
24 gears to the other one -- and I'm doing this sort of in the
25 order --

1 THE COURT: Whatever order you see fit.

2 MS. THYE: The public policy discharge claim, Your
3 Honor. As the Court is aware, South Carolina is at-will
4 employment state. Exception to that at-will employment
5 comes in an instance where they can allege the violation of
6 a mandate, clear mandate of public policy.

7 Most of the time, and the courts have said that there
8 are specific instances where that public policy discharge
9 will be invoked. Because ordinarily, as we know, an at-will
10 employee may be terminated for any reason or no reason, with
11 or without cause. And I'm reading from the McNeal case,
12 McNeal vs. The South Carolina Department of Corrections,
13 which sets forth most of the standards for these. It also
14 talks about the Ludwig and the Barron case.

15 Under the public policy exception to the at-will
16 employment doctrine, an at-will employee has a cause of
17 action in tort for wrongful termination where there is a
18 violation of a clear mandate of public policy. A primary
19 source of the declaration for the public policy of the state
20 is the general assembly. The courts assume this prerogative
21 only in the absence of legislative declaration.

22 The first thing that we note whether or not to invoke
23 this public policy discharge is whether there is a public
24 policy. The identification of the public policy is clearly
25 a question of law for the Court. The Court must determine

1 whether there is sufficiently pled and proven a public
2 policy that we are alleged to violate.

3 So where do we get that public policy? We look first,
4 as I've stated, from the general assembly. Are there laws?
5 There are clearly areas where if he were alleging a
6 violation of the fair wages standard, then that would be a
7 case where you would find it in the law of South Carolina.

8 What he alleges in this case is he complained about
9 inefficiencies in the process. It was staffing issues,
10 paying too much overtime and, ultimately, not having recruit
11 school often enough. Those simply do not rise to the level
12 of a clearly mandated public policy in South Carolina.

13 Most of the time, a public policy exception clearly
14 applies when the employer requires the employee to violate
15 the law. This is the Ludwig case where she was told she had
16 to, I think, ignore the subpoena or face discharge in
17 employment. The courts say you can't require somebody to
18 violate the law. That is a clear mandate of public policy.
19 The other is when the termination itself is a violation of
20 criminal law. We don't have either of those circumstances
21 here.

22 So what we have to look for is whether or not there is
23 an additional public policy that is implicated by Mr.
24 Edmonds' claims and allegations. The courts in South
25 Carolina have had the opportunity on a couple of occasions

1 to look at the types of things that they consider the public
2 policy. One is reporting about radioactive contamination on
3 a nuclear site, in the Garner case. The other one is a
4 violation of state and federal labor laws. Also, those are
5 the things that are clearly mandated public policy. This is
6 not the case here. Much like the McNeal case, McNeal merely
7 alleged she was terminated for personal, political,
8 pretextual and scapegoating purposes.

9 That is very analogous to the situation we have here.
10 Mr. Edmonds alleges that he was terminated, separated from
11 employment for personal reasons, that he was scapegoated,
12 that he was made to pay for all of the inefficiencies of the
13 department, that he had a falling out with Chief Jenkins.
14 Those are the reasons that he was terminated, not because he
15 invoked some failure in the law or some larger whistleblower
16 status.

17 In addition to these reasons that are enumerated, he
18 had, if he could -- and he walks kind of a fine line between
19 calling himself a whistleblower. But if he had
20 whistleblower status, the law provides a remedy under the
21 whistleblower status. That remedy under that statute would
22 have been his remedy here today. So the public policy
23 discharge is not to be found under the circumstances where
24 he has a remedy. Like I said, he's walked a little bit
25 closer to that line, but his conduct that he complains of

1 and that he alleges he was terminated for is because he
2 continued to complain about these and nothing was ever done
3 and, ultimately, he was made the scapegoat of some of the
4 negative comments in the survey and things like that.

5 By his own admission when I asked very specifically,
6 were you contending that we didn't pay people appropriately,
7 that this overtime issue was as a result of us not paying
8 them the appropriate wages earned, he said no, he didn't
9 have that. It was that we were using overtime too much.
10 Well, that's just an internal inefficiency. That may be
11 poor business practice, but that does not rise to the level
12 of a clearly mandated public policy.

13 If he cannot show this clearly mandated public policy,
14 then there is no way to get around this wrongful discharge,
15 this public policy discharge. We believe under the facts
16 that he has put in evidence that there is, quite simply, no
17 way for a jury to return a verdict in his favor on this
18 notion of public policy because it is for the Court to
19 determine what that policy is. And Mr. Edmonds has not
20 provided any evidence of anything enacted by the legislature
21 or the general assembly. And at this point, his case does
22 not warrant a brand new novel public policy under those
23 circumstances.

24 THE COURT: Mr. Porter, I'll be glad to hear you on the
25 public policy discharge.

1 MR. PORTER: Yes, Your Honor.

2 First and foremost, from a legal standpoint, this is
3 the second week in a row that we've dealt with this
4 argument. I'll begin by talking about McNeal. I have the
5 benefit, if you want to say benefit since we were on the
6 wrong side of that case, but of having been the second chair
7 in McNeal.

8 McNeal was kind of what I would call an old-fashioned
9 complaint that did not probably allege really anything. It
10 just kind of said this person was terminated in violation of
11 public policy. It didn't say why, when or how. So that was
12 thrown out on Rule 12 grounds more than anything else.

13 At Page 11 and Page 12 of my pretrial brief, I have
14 briefed this issue for you. First and foremost, the idea
15 that public policy discharge is solely restricted to
16 terminations that violate the law and terminations for
17 refusal to violate the law was explicitly disavowed in the
18 Barron case back in 2010 by the Supreme Court.

19 The Supreme Court recently recognized -- the Court of
20 Appeals recognized and the Supreme Court affirmed on
21 slightly different grounds in Donovan V. Surfside Beach a
22 claim of public policy discharge on behalf of a code
23 inspector. It might have been North Myrtle Beach, a code
24 inspector in North Myrtle Beach, based on the statutory
25 obligation she had in South Carolina code. So that's a

1 recent example of a different claim.

2 I was trying to find the name of the public published
3 opinion from last month while preparing my counter argument.
4 I believe it's ADC or VDC Contracting. There's a public
5 published opinion from last month finding that while the
6 evidence in that case did not support a wrongful discharge
7 claim that a wrongful discharge claim would apply there for
8 political speech.

9 The person in that case was an employee of a contractor
10 building a condominium unit. He engaged in some political
11 speech on Facebook that said hey, we don't want this
12 condominium unit tearing up Shemcreek and he got fired for
13 it. But the record evidence introduced at trial actually
14 turned out that he didn't get fired for that. But the Court
15 said that would have been a valid claim for political
16 speech. So I think the narrowing of the different sources
17 of public policy discharge is not quite right with respect
18 to it.

19 Here, to give you a statutory footing to create your
20 public policy discharge claim, on brief, I cited to the
21 various South Carolina Code Sections dealing with
22 firefighters and fire departments in general. I'll be the
23 first to state that those are generalized in nature, but I
24 believe that Mr. Edmonds was acting in furtherance of those
25 objectives with his protective conduct.

1 Now, to get more specific, Ms. Thye mentioned the
2 whistleblower act. The whistleblower act does provide a
3 protection against termination for people who report fraud,
4 waste or abuse. And I would suggest that that is a clear
5 mandated public policy in South Carolina. Now, typically,
6 you can't have a public policy claim where there's an
7 alternative remedy, which is what Ms. Thye was alluding to
8 earlier; however, that's not -- and that's the Dockins V.
9 Ingle's Market case is the alternative remedy, I think.

10 This is not an alternative remedy in my understanding
11 of the law because pursuant to the whistleblower act's
12 definition of employee at 8-27-10, subsection 2, it excludes
13 those employees listed in S. C. Code 8-17-370, which I
14 believe would include Mr. Edmonds where it states excluding
15 retired members of the police officer retirement system and
16 state employee retirement system as well from the State
17 Employee Grievance Act and thereby, also, the whistleblower.

18 In the worst case, you know, if we have to get a third
19 foothold, I think you can use between the whistleblower law
20 and those general firefighter statutes to get you to be
21 public policy. Thank you.

22 THE COURT: Yes, ma'am.

23 MS. THYE: Very briefly. In a later case, right after
24 the McNeal case in 2015, Taghivand vs. Rite-Aid Corporation,
25 the court had the same analysis and had the same struggle.

1 We exercise restraint when undertaking the amorphus inquiry
2 of what constitutes public policy. As the United States
3 Supreme Court has recognized, public policy and bodies adopt
4 a vague and variable quality and unless deducible in the
5 given circumstances from constitutional or statutory
6 provisions should be accepted as the basis of a judicial
7 determination, if at all, only with the upmost
8 circumspection. This comports with our understanding that
9 the primary source of the declaration of public policy of
10 this state is the general assembly. And the courts assume
11 this prerogative only in the absence of legislative
12 declaration.

13 Those statements found in Title 4 that Mr. Porter
14 references are operational. Those statements in Title 4
15 listed in his brief are how a municipality goes about
16 setting up a fire department. It does not create a duty,
17 much less a public policy as to how that fire department is
18 to be managed or established. So those are not the basis.

19 THE COURT: So give me the cite. Is it Taghivand?

20 MS. THYE: Yes, sir.

21 THE COURT: And the cite?

22 MS. THYE: It is 768 S.E.2d 385.

23 THE COURT: How do you spell Taghivand?

24 MS. THYE: It is T-A-G-H-I-V-A-N-D vs. Rite-Aid. I'm
25 sorry I didn't print out an extra copy.

1 THE COURT: I'll take a look at that.

2 Okay. Anything further on the public policy discharge?

3 MS. THYE: No, Your Honor. As to the whistleblower, I
4 think we've covered that. I actually have a copy of the
5 case.

6 THE COURT: If you'll pass that up, please. Thank you.
7 Let's move to your next one.

8 MS. THYE: Your Honor, moving on to the negligent
9 supervision claim, which is, I believe, the third claim.
10 Your Honor, he has brought -- and I'm arguing this in terms
11 of a negligence supervision claim because I believe that's
12 what he has attempted to set out in his pleading and what he
13 has sought to prove here. Because the negligence
14 supervision claim based on the failure of the
15 confidentiality kept by Ms. Stewart, she's not a city
16 employee and so -- she's, I think, clearly, an independent
17 contractor for purposes of this particular assignment and
18 exercise for the city.

19 But negligence supervision comes into play when an
20 employee, or, I guess, in this case, the contractor acts
21 outside of the course and scope of employment. And,
22 ordinarily, the tort claims act would provide an immunity
23 for this. There are circumstances that the law recognizes
24 wherein it is not appropriate for the City or for a
25 governmental entity to divest itself of liability when --

1 just based on the acts of the employee being outside of the
2 course and scope. And that's when negligence supervision
3 comes into play.

4 So in this case, what Mr. Porter and what Mr. Edmonds
5 have to show is that we had -- that an employer may be
6 liable for negligent supervision if the employee harms
7 another when he's upon the premises, is using chattel of the
8 employer, when the employer knows or has reason to know that
9 he has the ability to control the employee supervised and
10 knows or should know of the necessity and opportunity for
11 exercising such control.

12 In the case in chief of the Plaintiff, we've heard
13 testimony from Mr. Edmonds that establishes he felt the
14 confidentiality was breached. We've had testimony from Ms.
15 Wilson and Mr. Baker, I believe, that does not support that
16 the actual confidentiality of that survey was breached.
17 There is no evidence in the record currently that shows Ms.
18 Stewart divulged that information to anyone else in terms of
19 who said what in the assessment or the survey.

20 We do have testimony about the general comments. We've
21 had testimony from witnesses who talked about what the sum
22 and substance of the comments were, the areas where
23 improvement was needed, where things were pointed out and
24 people were named as needing to go or being a problem.
25 However, the attribution of those comments to someone has

1 never been testified to. It has not been testified to in
2 the Plaintiff's case. So there is no direct evidence that
3 the confidentiality was, in fact, breached and that any of
4 that happened as a result of Ms. Stewart breaching that
5 confidentiality.

6 So in the first instance, is there -- there's no
7 evidence of the breach. There's secondly no evidence that
8 the city manager in this circumstance, if you want to look
9 at who's in charge of the survey, knew or should have known
10 about the necessity of maintaining this -- of exercising
11 control over Ms. Stewart when the clear testimony was the
12 expectation it would be confidential, three times in the
13 e-mail to employees it was referenced, that that was part
14 and parcel of the scope of work for Ms. Stewart and the
15 manager never knew who said what in that particular survey.

16 So in the realm of negligent supervision, it falls on
17 the city to have some notice or knowing or should know of
18 the necessity to exercise that supervision. Quite frankly,
19 having failed to actually have the elements, we also have
20 immunities provided for negligence actions.

21 Your Honor, it is a rare occurrence that an employee
22 can sue an employer in tort in the State of South Carolina.
23 The exclusivity of the worker's compensation act, which has
24 been pled as a defense in our answer, provides that personal
25 injury as a result of torts covered by the act takes that

1 act out of the tort claims act and provides complete
2 immunity for that. So if the worker's compensation act
3 provides a remedy for him, that maintains the immunity of
4 the City under the tort claims act.

5 We have had the opportunity to sort of brief this issue
6 and argue this issue with Mr. Porter's firm on the opposing
7 side about whether or not personal injury is covered under a
8 tort action or whether personal injury goes to the worker's
9 compensation statute. The case law is clear that when you
10 are alleging reputational damages, damages of a proprietary
11 nature, that is outside of the act.

12 And we would acknowledge that reputational damage in a
13 defamation cause of action is outside of the act and the
14 tort claims act -- exclusion in the torts claims act
15 provides no defense for us there, no immunity for us there.
16 However, Mr. Edmonds clearly presented testimony of a
17 personal injury nature, emotional damage, emotional loss,
18 things that would ordinarily be considered actual damages in
19 a personal injury claim.

20 Those would be claims that he would be allowed to bring
21 under the purview of the worker's compensation act. It
22 doesn't require that he have a remedy under there -- doesn't
23 mean he can prevail, I guess, is what I should say under
24 that act. It just says that if he has a forum, that's where
25 he has to bring it. And if he has to bring it, there is a

1 specific exclusion in the tort claims act that indicates the
2 exclusivity of the worker's compensation act. So that would
3 provide an immunity for the city.

4 I think given the fact that his damages, a good portion
5 of his damages sound in personal injury, those are excluded.
6 I think that he didn't -- there was evidence in the
7 Plaintiff's own case that there was no way for the city
8 manager to know -- she testified that this was the first
9 notice that she had received. This was the only notice she
10 received of any concerns about confidentiality. I don't
11 think that rises to a level sufficient to get us a breach
12 under the negligent supervision analysis.

13 THE COURT: Mr. Porter.

14 MR. PORTER: Yes, Your Honor, and I'll be as brief as
15 possible.

16 THE COURT: I'm just curious,, you said -- Ms. Thye has
17 indicated she's had an opportunity to brief this issue. I
18 mean, where else have you heard -- have you been before
19 someone besides the circuit court on these issues?

20 MR. THYE: Not the circuit court, Your Honor. It was
21 another judge. Mr. Hicks, his colleague, we have the same
22 issues.

23 THE COURT: Okay. You've answered my question.

24 MR. PORTER: I argued this in front of a gentleman up
25 in Greenville, just went to federal district, his name

1 escapes me, a couple of months ago.

2 THE COURT: That's all right. I'm not going to call
3 him.

4 MR. PORTER: First, on the worker's comp exclusivity
5 issue, I think it's a bit of a red herring. If you look at
6 the statute itself, the worker's comp exclusivity provision
7 is at 42-1-540. It's defined itself on account of personal
8 injury or death by accident. Such injuries are exclusively
9 compensable under the act.

10 The next question then is how does the act define
11 personal injury? The act defines personal injury as
12 physical injury, stress or mental illness accompanied by a
13 physical injury or stress or mental illness unaccompanied by
14 a physical injury when accompanied by extraordinary and
15 ordinary workplace conditions not related to normal
16 employer/employee relations, such as disciplinary actions or
17 terminations. S. C. Code 42-1-60.

18 The court in first dealing with this worker's comp
19 exclusivity, I think in a big way, the Logus V. Mack Truck
20 case. People often miss the fact that that was a negligence
21 case and that Justice Toal's order said the negligence claim
22 can continue so long as it pertains to defamatory,
23 reputational harm and pecuniary losses.

24 Here, I think clearly we've got his pecuniary losses,
25 his wage loss, his reputational harm, but I think, also,

1 because this was the result of normal employer/employee
2 relations, such as terminations, 42-1-60, it's not a
3 personal injury as defined by the act and thus, not excluded
4 by the act.

5 Persuasive authority, just briefly, to respectfully
6 disagree with my opponent, Frasier V. Verizon Wireless, a
7 district court case in 2012 acknowledged that where the act
8 does not provide a compensable remedy, it cannot be used as
9 a bar to litigation. Here, I don't think there would be any
10 compensable remedy for any of the damages he talked about
11 under the act, again, because we go back to the personal
12 injury definition.

13 Another example is Judge Childs in Hand V. SunTrust
14 Bank, Judge Gurgle in Colleton V. Charleston Water Systems.
15 Judge Quattlebaum was who I argued that matter in front of
16 in Turner V. Coastal Carolina, which will be assessable, but
17 was more of a motion denied sort of opinion. But in the
18 Colleton case, Judge Gurgle gives a pretty good account of
19 the fact that there are potential windows where negligent
20 supervision claims can be actionable in the employment
21 sphere and I think this is one such claim.

22 Now, turning from the law back to the facts, I think
23 we've given you enough facts there. You have -- let's start
24 with the negligent supervision angle. We've got this report
25 that comes out and says there are big problems. And then we

1 continue to let the person the report is talking about act
2 with almost unlimited discretion.

3 Second, we have good evidence of a breach of
4 confidentiality with respect to -- before we even get to
5 what George Adams told Michael, which I think is enough
6 evidence to escape DV and make this issue for a jury. But
7 if we want to discount that a little bit because of the
8 nuance there, Reverend Baker says that Chief Jenkins is in
9 the room when the survey was read.

10 Now, if we're conducting a survey that's supposed to be
11 confidential, anonymous to analyze the fire department,
12 including specifically the command staff, then why is he in
13 the room? How does that not undermine on its face the
14 process of confidentiality? And there, the Court doesn't
15 even have to worry about this contractor stuff because
16 they're -- Ms. Stewart is not deciding who's going to be in
17 the room when she reads the survey, the city is. However, I
18 don't think the contractor stuff gets us there.

19 In the pretrial brief, I cited to the law on voluntary
20 undertaking. First and foremost, with respect to the
21 pretrial brief, I gave you about a two-page account of
22 worker's comp exclusivity starting at Page 12 and ending at
23 Page 14. And then I give you a discussion of voluntary
24 undertaking at Page 15, going into Page 16. And the
25 voluntary undertaking premise from the second restatement of

1 torts was recognized as potentially applicable to the idea
2 of duty in the case of Johnson V. Robert E. Lee Academy, 401
3 S.C. 500.

4 Your Honor, I know I've rambled. If there are any
5 outstanding questions, I'll be happy to answer them.

6 THE COURT: Thank you.

7 Anything further?

8 MS. THYE: Your Honor, in the Dickert case that Mr.
9 Porter mentioned before, it very clearly states the rights
10 and remedies granted by the title, which is worker's comp
11 act, to an employee when he and his employer have accepted
12 the provisions of the title to pay and accept compensation
13 on account of personal injury or death by accident shall
14 exclude all other rights and remedies of such employee as
15 against the employer, common law or otherwise.

16 What Mr. Edmonds has alleged is more in the nature of a
17 mental injury in terms of what he has alleged. There is
18 information in the record that -- I think we've heard on a
19 number of occasions that he's a broken man, that he's
20 suffered these mental injuries. And that is a personal
21 injury, not a proprietary loss. So under the act, that
22 would fall under the compensation act.

23 Now, whether, ultimately, it would be a compensable is
24 a question to be decided under the commission, who has the
25 exclusive jurisdiction to handle things under that

1 particular worker's comp act. I do have a copy of the
2 Dickert case.

3 THE COURT: Yes, if you would hand that up, please.

4 MS. THYE: And that is a Supreme Court ruling from the
5 early 90s.

6 Your Honor, I think it is clear that for a lot of the
7 damages that Mr. Edmonds alleges, it's simply -- the tort
8 claims act, there's a reason for the immunity protection
9 there. And that falls under this case for sure. So I think
10 as a matter of law, the negligent supervision claim should
11 fail.

12 THE COURT: All right. Thank you.

13 I believe that leaves us one more on the defamation.

14 MS. THYE: Defamation, yes, sir.

15 Your Honor, I must admit that it took me a little bit
16 of time to get my head around defamation. I think I agreed
17 with Justice Toal's comment in the Holzscheiter case that
18 it's in practice maybe clearer than in writing, but this
19 case, in particular, is a little simpler in the sense that
20 he has failed to attribute that defamatory statements, false
21 and defamatory statements to the City of Columbia.

22 In order to show a defamation, he has to have the false
23 and defamatory statement by the city about the Plaintiff.
24 So first of all, he has to show or it must be shown that
25 that statement was false. The statement that he is alleging

1 is the blog statement, that two-sentence statement from some
2 blogger that list the problems with the glove and the
3 problems with the purchasing of that glove. As the Court
4 has already alluded to, there is no mention in that blog of
5 Mr. Edmonds' name. Not once. The only thing it says is
6 it's one thing when an individual makes a potentially
7 unethical decision, such as a chief with purchasing
8 authority. Now, we heard from Mr. Edmonds' own testimony,
9 he wasn't the only chief with purchasing authority.

10 He said everybody knew it was me. Everybody knew I was
11 the chief. But when asked, he said wait a minute, Chief
12 Jenkins had final say. I would imagine if Chief Jenkins had
13 final say, then the deputy chief or the assistant chief,
14 Chief Tinsley at the time, probably also had authority. So
15 this chief with purchasing authority could have been,
16 perhaps, any number of folks, but Mr. Edmonds is sure that
17 it talks about him, although nowhere in that sentence does
18 it say his name.

19 It also says that he purchased some \$60,000 worth of
20 firefighting gloves that were not part of a rigorous
21 internal test of brands suited for the department. And the
22 situation is the subject of an open internal investigation.
23 We heard testimony that it was, in fact, investigated, that
24 that statement was true, that it was the subject of an open
25 internal investigation conducted by members of the fire

1 department to determine whether or not fire department
2 policy had been violated. Ultimately, he was cleared of
3 that. But the statement that it is the subject of an open
4 internal investigation was absolutely true. It also is true
5 that the gloves purchased were not part of the test, the
6 most recent test. There was a second test that Mr. Edmonds
7 knew nothing about that those gloves were not part of the
8 testing of. So that statement first, it's our contention,
9 that he hasn't shown it's false. That there's nothing in
10 there indicating that statement is false.

11 Second, that statement is not defamatory on its face in
12 the sense that it says he violated any laws or that he
13 committed any criminal act. It refers to a questionable
14 purchase, potentially, unethical decision, I guess.

15 So I think we have to look at whether or not that is
16 defamatory on its face, defamatory per se. And if it is
17 obvious and capable of only one interpretation, then we look
18 at the analysis of whether he has proven any willfulness,
19 recklessness or conscious disregard on behalf of the city.
20 Because he's not suing Mr. Aiken, he's not suing the
21 blogger, he's suing the city. And there's nothing in this
22 statement that indicates the city was actually responsible
23 for publishing this statement. The publication didn't come
24 from the city. I think the only thing the Plaintiff can
25 hitch his wagon to is this source. So sources tell Quorum

1 is the subject of an open, internal investigation.

2 I would submit to you that is far too attenuating to
3 attach liability to the City of Columbia absent testimony
4 that the source had something to do with the management of
5 the City of Columbia. There was testimony from Ms. Wilson
6 that nobody speaks anonymously on behalf of the city, that
7 when people do speak in the public information office, it is
8 done so with authority from her. And it would be for
9 attribution, not an anonymous source in a blog.

10 So now having shown that it's not false, the question
11 that -- they can't show willfulness or wantonness on the
12 part of the City, not to mention it's not about the
13 Plaintiff. Then we go into the subject of privilege. If
14 you assume for purposes of argument that the source was a
15 city source, say it was somebody speaking anonymously with
16 authority on behalf of the city, which there's no evidence
17 in the record, then you would look to whether a privilege
18 attached. This conversation or this source was speaking
19 about things that were matters of public importance, that
20 they were stated for the limited purpose of disclosing
21 something that was general in nature and public in nature
22 and it was a proper motive to be published. So we think a
23 privilege also may apply here.

24 For those reasons, quite frankly, he fails in the
25 defamation in the elements of the cause of action, not to

1 mention finally, the damages. There was no one that took
2 the stand, Mr. Edmonds did not even indicate anyone shunned
3 him, treated him differently, didn't respect him. All the
4 folks that testified testified they knew him, they still
5 thought he was trustworthy, they still thought he was
6 professional, still thought he was an honest person. None
7 of that shows that he has sustained any reputational harm,
8 which would support a verdict in favor of the verdict in
9 this case.

10 For that reason, we think, quite frankly, the Court has
11 enough has a matter of law to determine that this cause of
12 action should not be submitted to the jury. Thank you.

13 THE COURT: Thank you.

14 Mr. Porter, I'll be glad to hear from you.

15 MR. PORTER: Certainly, Your Honor. Very, very quickly
16 on the idea of damages. Damages are presumed in a case of
17 per se defamation. Per se defamation includes defamation
18 that addresses one's own fitness in their business or
19 profession, which this, obviously, is. And that's from the
20 Holtzscheiter case that Ms. Thye just cited to, 332 S.C.
21 502.

22 Next, privilege is an affirmative defense they have the
23 duty to prove. I do not think that they could do that if
24 they wanted to here. The relevant case is the McBride V.
25 Greenville County School District case where a principal's

1 comment -- and there's three iterations of that case. But a
2 principal's comment in this particular iteration to a
3 teacher's aid was not privileged. The comment interest had
4 been abused. There was no need to know basis.

5 Here, we've discussed the rumor bill. Mr. Joyner
6 talked about how people were talking about it was for the
7 gloves, it was the facility, it was for that, for this. Mr.
8 Joyner didn't have to believe it, but he was able to testify
9 that others did. Mr. Edmonds testified that after this
10 article comes out that he gets calls about his relationship
11 with Seth Newton.

12 I commend my opponents on bringing up the very good
13 argument on Exhibit 9 and getting us down to those two
14 lines, but, ultimately, I think saying that those two lines
15 were all that was out there is a bit of a straw bandwagon.
16 So to overcome that, I had the report as an exhibit, so we
17 would have in the record, you know, some of the other things
18 that were discussed in that article. The accusation that
19 Mr. Edmonds was having an inappropriate, unethical
20 relationship with the supplier violating State ethics law.
21 So that gives us another pro se prong of defamation.

22 So the idea that he's having this unethical
23 relationship he's discussed in Exhibit 12 and says everybody
24 is saying this and they'll say they heard it from somebody
25 else. And the city will have the opportunity in closing to

1 say, you know, Ron Aiken should be the real defendant yada,
2 yada, yada, but here for the purposes of a directed verdict,
3 it's the city to decide to terminate him on those pretextual
4 and false crimes.

5 The interesting thing the record will show you is they
6 said well, that was true, there was an ongoing investigation
7 he was the subject of. Actually, it wasn't. If you look at
8 the report, the report was on May 30th, May 30th closing it
9 out saying Michael Edmonds was cleared. That article is 20
10 days later. He was not the subject of an active
11 investigation. Quite the contrary, he had done been
12 cleared. And I know I'm playing semantics here, but we
13 don't even have to get there. That is not what the
14 defamation was about, just those two lines. The idea was
15 that he was responsible for the crumbling facilities, that
16 he was responsible for an unethical relationship with Seth
17 Newton and that he was getting kickbacks. That was what
18 people were saying in that report, which is in the record in
19 full. And then terminating him based on that is, I believe,
20 an actual claim of defamation by act. And the cases cited
21 --

22 THE COURT: All right. Explain to me -- help me --
23 what is the act, the defamation by act, what is the act that
24 the Plaintiff alleges has been committed by the city?

25 MR. PORTER: Sure. Forcing him to resign on these

1 false grounds.

2 THE COURT: And where is the evidence that they forced
3 him to resign on these false claims?

4 MR. PORTER: Certainly. Mr. Edmonds testified that Mr.
5 Jenkins said that the reason was the glove issue and the
6 facilities. He said with the facilities and then the glove
7 issue as the last straw, I have to have your resignation.
8 And then Mr. Edmonds testified that he said, Chief, I didn't
9 do that. So that's in that monologue where Mr. Edmonds
10 described the termination meeting. Those are the grounds
11 use by the fire chief.

12 THE COURT: All right. I understand.

13 MR. PORTER: And just briefly on the law, the
14 defamation by act case is Tyler V. Macks and the defamation
15 by insinuation is Eubanks V. Smith, both cited in our
16 pretrial brief under the initial header defamation. Thank
17 you, sir.

18 THE COURT: Anything further?

19 MR. THYE: Your Honor, we have pled as a defense the
20 proof of this. And what I think I understand Mr. Porter to
21 say is because the act of separating him from employment due
22 to the glove and the station issue, that is the defamatory
23 statement coupled with the blog post. He was separated from
24 employment as a result of the glove issue and the many
25 issues. There was nothing false about that. Reverend Baker

1 did testify that I had concerns that in that year from the
2 time that we spoke and the end when it became apparent and
3 his e-mail said many instances of ineffectiveness of Mr.
4 Edmonds. So there were reasons that he was asked to
5 separate. I mean, that is in the record. So I believe that
6 gets us past the falsity of the statement.

7 And the report, the internal report and any defamation
8 contained therein is quintessentially a qualified privilege
9 because it is done for the intent of the report, it's for a
10 good purpose. It certainly is done on good faith. It was
11 for a limited purpose, for the purpose of finding out if
12 there was anything unethical. Mr. Edmonds was cleared of
13 it. So it's not the case that the fact that the rumors and
14 innuendo was flying, those rumors aren't attributable to the
15 city --

16 THE COURT: Let me -- help me, Mr. Porter, sort of wrap
17 my head around that. The publication was unprivileged?

18 MR. PORTER: Yes, Your Honor.

19 THE COURT: Where is the evidence that the city made
20 that publication?

21 MR. PORTER: Again, we come back to the idea of
22 defamation by act and insinuation. So forcing him to
23 separate on these grounds in the midst of it is going to
24 send the message and did send the message to the entire fire
25 department, and I think Mr. Joyner testified to that and the

1 jury certainly heard it, that Mr. Edmonds was sent packing
2 over this stuff.

3 And that was the same thing with Tyler V. Macks. We
4 fired the manager who failed the polygraph and we fired the
5 assistant manager who refused to take the polygraph, which a
6 private employee has a legal right to refuse to take it.
7 And because we fired him for refusing to take it, we have
8 defamed him by act. By conveying this image to their
9 coworkers that that employee --

10 THE COURT: Well, had they not already conveyed the
11 image to the coworkers that he was cleared? Wasn't he
12 cleared? When was he cleared?

13 MR. PORTER: I believe the date on the report is May
14 30, but that's a confidential report. There's no evidence
15 that they shared he was cleared with anybody. Just the
16 opposite --

17 THE COURT: Well, if -- all right.. I'm still having
18 difficulty when the defamatory statement says sources. I
19 have no idea -- I mean, sources is not -- there is no
20 evidence telling us anything beyond the word sources.

21 MR. PORTER: And I don't think there has to be. That
22 is not the defamatory statement. The defamatory statement
23 --

24 THE COURT: Well, the defamatory statement, there's no
25 indication in the statement that he was terminated.

1 MR. PORTER: Sure. The defamatory statement is forcing
2 him to resign on the basis for something he was not
3 responsible for in such a manner that others knew. They
4 made it look like he was responsible for it. We're not
5 worried about what the sources said to Ron Aiken. We're
6 worried about what the City of Columbia did --

7 THE COURT: Again, you've got to educate me. You're
8 talking about the injury. My question is -- and I think I
9 clearly understand it's not a defamatory statement -- well,
10 one point you argue that may be sufficient evidence to go to
11 the jury that it's defamatory per se because it goes -- it
12 strikes at his suitability to work or unfitness in one's
13 business or profession.

14 If that's all there was, my question is how do
15 attribute that statement in that article on that blog to the
16 City -- if you're saying it's defamatory per se, then there
17 has to be a way to directly trace it to the City of
18 Columbia, right?

19 MR. PORTER: Well, I think we're talking apples and
20 oranges. And maybe I'm not conveying it well. I'm saying
21 that the issue was they terminated him in the wake of all
22 this talk that he was responsible for the facilities and for
23 an unethical relationship. That talk not only came from Ron
24 Aiken article. If Your Honor looks at the report at the
25 bottom of Page 2 of the report, independent of the Ron Aiken

1 article, we have people suggesting that my client's in an
2 unethical relationship with Seth Newton and with -- and is
3 getting kickbacks.

4 Now, that report clears him on the 30th of May. I
5 believe that's the date, I'm not looking at it, but I
6 believe it was in May. On July 5th, a month and five days
7 later, Chief Jenkins says with the facilities and then this
8 glove issue as the last straw, I have to have your
9 resignation. So what we have here, we have a department
10 that is --

11 THE COURT: Well, I see what you're saying. And,
12 certainly, I see what the Defense is saying. The glove
13 issue can be argued that it's broader than just whether he
14 had an improper relationship with the supplier. The Defense
15 is going to argue that the glove issue means just the way
16 the whole glove issue was handled from the beginning, five
17 years of -- you know, what they argued.

18 So their argument is that -- and that certainly may be
19 an argument to the jury, that it's much broader than just
20 the fact that he may have had an improper relationship with
21 the supplier, which is what you are indicating -- that would
22 have been the basis for his unethical behavior if that had
23 been proven true, right?

24 MR. PORTER: Yes.

25 THE COURT: But your argument is, at least, there's

1 sufficient evidence to get it past the directed verdict to a
2 jury on that?

3 MR. PORTER: Yes.

4 THE COURT: Okay. I think I've got it.
5 Anything else?

6 (No response.)

7 THE COURT: All right. We'll take a break for a while
8 and I'll be out in about 20 minutes.

9 (Short break.)

10 THE COURT: When the jury comes back in, they have
11 chosen Juror No. 121, Ann Hansford, to be the foreperson.

12 All right. Taking up the motion for direct verdict on
13 the motion for promissory estoppel, at this point, the Court
14 is going to deny the directed verdict motion. Certainly, I
15 will be the one to make that determination, but at this
16 point, I'm going to deny that motion.

17 The public policy discharge, certainly, the case law is
18 clear that when public policy discharge is an issue, the
19 question is there a public policy that's violated. And that
20 is a question of law that has to be determined by the Court.
21 It is not a fact about public policy. I find that the
22 Plaintiff in his allegation that he was terminated because
23 he made reports to city administration and a third-party
24 consultant about understaffing, overpaying overtime,
25 violation of city policies and uneven application of those

1 policies amongst employees is not a clearly mandated
2 violation of public policy.

3 I did look at that Rite-Aid case. It's clear that the
4 Supreme Court -- in that particular case, the issue was
5 reporting an employee who was discharged for reporting a
6 crime or what they thought was a crime. And the Supreme
7 Court made it very clear that our courts are going to uphold
8 our status as an at-will employee, state that is a law and
9 they would not expand or add another, in essence, public
10 policy even under those circumstances.

11 So I find that there's not a basis by which this Court
12 can determine as a matter of law that's a violation of
13 public policy. So I will grant the Defense motion on the
14 public policy discharge.

15 On the negligence charge and the defamation charge, I
16 find taking the evidence in the light most favorable to the
17 Plaintiff, the nonmoving party in this case, there is
18 sufficient evidence by which a jury could -- there are
19 questions of fact which entitles a jury to make the ultimate
20 determination on those issues. So I'm going to deny the
21 directed verdict on the negligence and the defamation.

22 Anything else at this point from the Plaintiff?

23 MR. PORTER: Not with respect to that. I will have a
24 brief legal issue regarding their first witness, Your Honor.

25 THE COURT: Anything on the directed verdict motions?

1 BY MS. WILLIAMS:

2 Q Good afternoon, Chief Adams.

3 A Good afternoon.

4 Q Will you please tell the jury a little bit about
5 yourself?

6 A Of course, my name is George Adams, Jr. I've been with
7 the Columbia Fire Department 25 years. I grew up in
8 Columbia, South Carolina. I'm a proud product of District 1
9 schools. Been the fire marshal for the last eight years and
10 I have really enjoyed working with the Columbia Fire
11 Department.

12 Q Chief Adams, are you familiar with the assessment that
13 was conducted by Liz Stewart & Associates in 2016?

14 A Yes.

15 Q Did you participate in that assessment?

16 A I did.

17 Q What was your understanding, if anything, as to the
18 confidentiality of the information shared in that
19 assessment?

20 A There wasn't any information shared, it was just
21 questions based on what was going on in the fire department.

22 Q And just to clarify, was there some type of promise, if
23 you would, that if you said something to Ms. Stewart that
24 she would keep confidential?

25 A I don't recall, but there was nothing shared to me

1 about anything.

2 Q Do you recall having a conversation with Mr. Edmonds
3 shortly after you participated in the assessment?

4 A I do.

5 Q And did the two of you discuss the assessment at all?

6 A No, we did not.

7 Q I would like to show you what has been marked as
8 Plaintiff's Exhibit 6. Chief Adams, would you please turn
9 to Page 2 -- before you do that, go back to the first page.
10 What is that?

11 A This is an e-mail that came from Ms. Wilson to Mr.
12 Edmonds.

13 Q And so that's at the top. Who is the original message
14 from?

15 A The original message came from Mr. Edmonds to Ms.
16 Wilson.

17 Q And what's the date of the original message?

18 A March the 24th, 2016.

19 Q Okay. I'd like to direct your attention to the second
20 page. And beginning at Line 6, please, starting with Chief
21 Adams, can you please read?

22 A Chief Adams and I had small talk, but did not elaborate
23 as to what I said after Chief Cothran's interview. I met
24 him for lunch and I can only assume that Chief Adams
25 conducted his interview at that time. At 1:30, I had a

1 meeting with Chief Adams at his office concerning another
2 matter. And at the beginning of the meeting, he said, She
3 said the guy before me had a lot to say. I laughed and
4 said, Chief Cochran? He replied, No, she said you. Said
5 you had a lot to say. It was good information, but a lot of
6 it.

7 Q You can stop there. Do those statements accurately
8 reflect comments that you made to Mr. Edmonds?

9 A I don't recall a conversation like that. What I said
10 was that he had a lot to say. And she did not call a name.

11 Q Other than you had a lot to say, is there anything else
12 that you stated to Mr. Edmonds that Ms. Stewart may have
13 divulged to you?

14 A No, she didn't divulge anything to me.

15 MS. WILLIAMS: Thank you.

16 THE COURT: Mr. Porter.

17 CROSS-EXAMINATION

18 BY MR. PORTER:

19 Q You were asked two times by Ms. Bennett-Williams
20 whether or not you understood what was said to Ms. Stewart
21 was going to be confidential and both times, you jumped in
22 and said she shared nothing with me. Did you not understand
23 the question Ms. Bennett-Williams asked?

24 A I did.

25 Q Any reason you just jumped right in that she shared

1 nothing with me rather than answering the question of were
2 you told anything about confidentiality?

3 A I thought I answered the question.

4 Q And your testimony is that you don't recall saying what
5 Michael Edmonds said you said?

6 A I don't recall what was read.

7 MR. PORTER: I don't have anything else. Thank you,
8 sir.

9 THE COURT: Ms. Williams?

10 MS. WILLIAMS: Nothing further, Your Honor.

11 THE COURT: Thank you.

12 Mr. Adams, you can step down. Thank you.

13 Ladies and gentlemen, I have met with the attorneys to
14 discuss the logistics of the rest of the day and it appears
15 that the additional witnesses -- or the next witness would
16 take us well past 5 o'clock or so, and so this would be an
17 appropriate time for us to break for the day. We'll take up
18 some matters while you're not here.

19 I'm going to ask that you be back in your jury room
20 tomorrow morning at 9:30. Again, I remind you -- I told you
21 I was going to tell you this over and over and over again,
22 but I'm going to tell you again. No googling, no looking up
23 names or places or people on your handheld devices. No
24 discussion of the case at all among yourselves or anyone
25 else, for that matter.

1 promptness. We're ready to proceed with trial.

2 Ms. Williams, call your next witness.

3 MS. WILLIAMS: The Defense calls Ms. Liz Stewart.

4 LIZ STEWART, after being duly
5 sworn, testified as follows:

6 THE COURT: Have a seat in the witness stand, please.
7 State your name for the record.

8 THE WITNESS: Liz Stewart.

9 DIRECT EXAMINATION

10 BY MS. WILLIAMS:

11 Q : Good morning, Ms. Stewart.

12 A Good morning.

13 Q Will you please tell us a little bit about yourself?

14 A I am the president of Stewart & Associates Consulting
15 Firm. As of February 1st of this year, we've been in
16 business for 35 years. And our company is focused on
17 serving Fortune 500 companies and a number of municipalities
18 in the conduction of surveys, assessments and training and
19 management development.

20 Q Tell us a little bit about your educational background.

21 A I have undergraduate degrees in French, Spanish and
22 education. I have a Master's in psychology, a Ph.D in
23 economics and a law degree.

24 Q And you say that you have a consulting firm and you do
25 surveys and assessments?

1 A Yes.

2 Q Do you have any particular training in that area?

3 A Yes. I was certified in a number of courses. And
4 before I started my company, I was an executive with Xerox
5 Corporation and received a phenomenal amount of training and
6 education and managed all of their strategic planning and
7 surveys and assessments in HR.

8 Q And can you tell the Court a little bit about the types
9 of businesses that you typically consult with?

10 A A lot of them are large corporations. We do work with
11 -- if we had to categorize a couple of niches, they would be
12 healthcare and municipalities. We work with a number of
13 municipalities. And I'm fond of saying that our corporate
14 work allows us the luxury to be able to afford to work with
15 healthcare and municipalities.

16 Q Has Liz Stewart & Associates ever had the occasion of
17 contracting with the City of Columbia?

18 A Yes, we have, on numerous occasions.

19 Q Okay. Can you tell us a little bit about your history
20 of working with the City of Columbia?

21 A Yes. We have served the city approximately 30 years.
22 We have worked on a variety of projects, from training. We
23 have done specific departmental assessments. We have
24 conducted previous surveys in various departments. And we
25 have consulted with city leadership on strategies for

1 improvement.

2 Q Were you contacted by the City of Columbia in 2016 to
3 work on a project?

4 A Yes, I was.

5 Q And what was that project?

6 A The project was specific to the fire department. And
7 it was a combination of firefighter survey and individual
8 interviews with 108 of the management/leadership staff
9 members.

10 Q And at any time, did the city direct your methods or
11 techniques during those surveys and assessments?

12 A No, we have a very strict understanding with our
13 clients. Our proposals are very specific as to what we're
14 going to do and how we're going to do it. And I do that
15 because if they are not willing to agree to the processes,
16 then we're probably not the firm they should use.

17 Q Have you ever had a company not agree to those
18 processes?

19 A I have had one or two, but they did not become clients.

20 Q In terms of this 2016 survey, what agreement, if any,
21 was there between you and the City of Columbia in terms of
22 the anonymity or confidentiality of the responders to the
23 survey?

24 A I think there was total clarity that it would be an
25 anonymous survey. I was going to meet with each individual

1 one-on-one. The report that was to be the result of all
2 those interviews was going to be detailed and specific as to
3 content of responses, but absolutely would not identify a
4 person with a comment. It's very important for people to
5 feel that they can be open and honest and forthright. And
6 our history with the City, certainly, validates that
7 openness. The report was quite lengthy.

8 Q So is it fair to say that on the outset of that
9 provision of the agreement that the City of Columbia agreed
10 to that?

11 A Absolutely, they were very much in favor of it.

12 Q And is it safe to say that you agreed to that, also?

13 A Absolutely. I insisted on it.

14 Q And did you have any particular protocols or measures
15 that you put in place to protect the anonymity of the
16 responders?

17 A We had a form that people would use to sign up on a
18 schedule for when was most convenient for them to attend.
19 And the City had a sign-in sheet because some of the people
20 that I spoke with were on off hours and there was some
21 additional compensation that would be available to them. I
22 took a lot of notes, but there were no names on any of those
23 sheets. They were shuffled and transcribed at random.

24 Q So to be clear, your notes did not include anyone's
25 name?

1 A They did not. In fact, they were shredded after the
2 report was finalized.

3 Q Do you recall there ever being a time that you shared
4 any information with the responders that previous responders
5 had shared with you?

6 A Absolutely not. I would not do that. There would be
7 no need.

8 Q Is there ever a time that you recall sharing any names
9 of the responders and associate comments with those
10 responders when you gave your responses to the City of
11 Columbia?

12 A No.

13 Q And who did you present your findings to?

14 A I presented it to the key stakeholders, which were the
15 city manager, the director of HR and the fire chief. And
16 there was an assistant city manager there as well.

17 Q And how did you present those findings?

18 A There was a complete written report that was provided
19 and I discussed the findings and made some recommendations
20 as to appropriate actions going forward.

21 Q Can you give some examples of the recommendations that
22 you made?

23 A Well, there were a number of key issues. One that I
24 specifically recall was communication. And I had suggested
25 that -- in fact, I made several suggestions. That the fire

1 chief spend more time visiting the individual stations, that
2 he distribute some kind of a newsletter or even use a video
3 conferencing mechanism or an online mechanism. But I really
4 felt that communication needed to be enhanced and it was, in
5 fact, probably at the root of a lot of the other issues. So
6 that's kind of how we discussed it.

7 Q And that particular recommendation of visiting
8 stations, better communications, did you share that
9 recommendation with Chief Jenkins?

10 A Yes, he was present.

11 Q And what was his response, if any, to your
12 recommendations?

13 A On that particular one, I think he wholeheartedly
14 agreed and I think subsequently did enhance his time in the
15 field, so to speak, with the stations.

16 Q Now, within your recommendations, did you ever give any
17 recommendations of certain people needed to be terminated,
18 for example?

19 A No. That would certainly not be appropriate. That was
20 not my purview or my reason for being there. I was to
21 address issues and make recommendations about specific
22 policies or efforts to improve communication and trust.
23 But, certainly, we never got to the level of anything
24 specific and I would not do that.

25 MS. WILLIAMS: Thank you, Ms. Stewart. Please answer

1 any questions that Mr. Porter has.

2 THE WITNESS: Thank you.

3 THE COURT: Mr. Porter.

4 MR. PORTER: Yes, Your Honor, may it please the Court.

5 CROSS-EXAMINATION

6 BY MR. PORTER:

7 Q Ms. Stewart, when you're conducting interviews like
8 this, do you ever have to use techniques to get your
9 interviewee, if that's the appropriate, to be at ease,
10 comfortable to share their information?

11 A I usually introduce myself. For almost every one of
12 the people that I interviewed in this particular case, I had
13 never met them before, so I introduced myself. I was very
14 clear about what the process would entail, that there were
15 some questions I would be asking. And those questions, by
16 the way, were exactly the same for every interview. And
17 that this was going to be confidential. The report that
18 would be reported to the stakeholders would be generic, no
19 comments would ever be attributed to an individual. And
20 then I began the process.

21 Q Is it your testimony, though, that all of your
22 interviewees are at ease and you do not have to encourage
23 them to talk, they come in just willing to share?

24 A Not always, but in this particular situation, there
25 were some issues in the fire department and people were very

1 eager to speak about it. They did not require a lot of
2 encouragement.

3 Q Do you remember each and everything you said in each
4 and every one of these interviews?

5 A I, certainly, could not swear to every single word I
6 said in every one of them. It was over a
7 three-and-a-half-month period. And it was three years ago.

8 Q I understand. Do you remember a gentleman named George
9 Adams?

10 A Not offhand.

11 Q Do you remember each and everything you said to George
12 Adams?

13 A No.

14 Q And similarly, you would not know what George Adams
15 took away from what you said, correct?

16 A I, certainly, am not a mind reader.

17 Q Understood. You said that the city, for their own
18 purposes, had a sign-in sheet outside of your meeting room?

19 A Yes. And those were collected from someone by HR. I
20 did not have anything to do with those forms.

21 Q And what was all the city?

22 A Yes.

23 Q And that sign-in sheet would have shown when people
24 signed in and who signed in before people?

25 A I don't know what the specific form was, I know there

1 was one outside on a desk and they were to sign in before
2 they came in.

3 Q And you said you presented your report to the key
4 stakeholders, which included Chief Jenkins?

5 A Yes.

6 Q And the City, were they responsible for making sure
7 that the appropriate people were in the room when you
8 presented your report?

9 A Yes. They designed the list of people to be assessed
10 and they assigned them time off or covered -- I don't know
11 what the mechanics were, but they were responsible for
12 getting them there.

13 MR. PORTER: Your Honor, may I approach?

14 THE COURT: Yes, you may.

15 MR. PORTER: And I'm handing the witness a copy of the
16 document I handed Your Honor yesterday. It has not been
17 introduced at this time.

18 THE COURT: It is marked, isn't it? Wasn't it marked?

19 MR. PORTER: Marked for ID.

20 THE COURT: Let's have it marked for ID.

21 MR. PORTER: Can I get that back from you?

22 THE WITNESS: Certainly.

23 MR. PORTER: Let's mark this as Plaintiff's No. 15 for
24 identification purposes only at this time.

25 (Plaintiff's Exhibit No. 15 marked for identification

1 only.)

2 BY MR. PORTER:

3 Q Now, Ms. Stewart, can you tell us what this document
4 is?

5 A Yes, this is the report of the fire department officer
6 interviews that we conducted.

7 Q And this is the report you submitted to top brass of
8 the city?

9 A To the city leadership, yes.

10 Q Sorry. And the day you submitted this is what?

11 A April 15th.

12 Q Turn with me to the second page, if you will.

13 A (Witness complies.)

14 Q Now, you mentioned communication as being a major
15 finding. Was that the most significant finding in your
16 mind?

17 A I would have to review this document more carefully,
18 but I do remember that it was a major document -- a major
19 issue. I remember that trust was an issue.

20 Q And let me read to you -- I get we're talking over
21 three years and I'm not trying to say hey, look at this --
22 well, I am trying to say hey, look at this, but I'll tell
23 you what I'm looking at.

24 A Okay.

25 Q Four paragraphs down, first sentence: The most

1 significant finding and the greatest concern is the lack of
2 trust of the department leadership. In your mind, was that
3 the most significant finding at the time?

4 A Yes. And I do think that underlying that was
5 communication. I think they're integrally tied.

6 Q Understood. I think that's fair. Moving on to the
7 second bullet at the bottom that you see: Chief Jenkins
8 jointly with the leadership must decide if he is willing to
9 take the necessary steps to generate trust from his staff.
10 Were problems with Chief Jenkins discussed in your study?

11 A The interviewees did express concerns about his
12 leadership.

13 Q If you will turn to Pages 9 through 11.

14 A (Witness complies.)

15 Q Would you agree with me at Pages 9 through 11, we have
16 two full pages of bullet points that are more or less
17 concerns expressed about Chief Jenkins?

18 A Yes.

19 Q What is LOCO? You see that a lot on Page 9?

20 A LOCO was an acronym that was used and I explained in
21 the first bullet, Last One in the Chief's Office.

22 Q You're hired to make findings, not just gather
23 information, right?

24 A Yes.

25 Q Did this concept of LOCO matter to you; and if so, why?

1 A Well, you know, personally, I think every comment is
2 valued and should be considered. The fact that it was
3 mentioned repeatedly, obviously, makes it more valuable as a
4 comment. And it, certainly, was a part of the trust and
5 communication issue.

6 Q What did it mean, LOCO?

7 A That decisions were influenced by the last person to
8 speak to him.

9 Q After the LOCO talk, we see the comment: Chief's
10 niceness is his greatest strength and his greatest weakness.
11 Did you hear things like that a fair amount?

12 A I heard them as many times as they're reported in here.

13 Q Okay. What was meant by that?

14 A I think it, certainly, means that he was a nice, kind
15 person, who treated all of his people with niceness, but
16 sometimes, not the firmness that might be necessary.

17 Q We read on: If the chief wants to be a city
18 councilman, he needs to go work on that. Did you hear talk
19 about the chief wanting to be a councilman a handful of
20 times?

21 A Again, I haven't counted, but as many times -- every
22 single comment was recorded, so as many times as it's in
23 here, it was said.

24 Q What was your analysis based on that being brought up?

25 A I really didn't have one.

1 Q On Page 10, six bullet points down, we see: Chief
2 Jenkins is letting lots of bad things happen --

3 MS. THYE: Your Honor, I'm going to object at this
4 point. I tried to wait to see where he was going with this,
5 but he's asking her to read hearsay statements from the
6 report.

7 THE COURT: I sustain the objection.

8 MR. PORTER: Your Honor, at this time, consistent with
9 the objection, I know where we'll go, but for the sake of
10 the record, I'd like to move this into evidence as
11 Plaintiff's Exhibit 15. I believe this is not necessarily
12 --

13 THE COURT: Let's do this. Lawyers approach.

14 (Bench conference.)

15 THE COURT: Ladies and gentlemen, we have an issue we
16 need to take up outside of your presence. I'm going to
17 allow you to go back to your jury room. We'll have you back
18 in here very shortly. Do not discuss anything you've heard
19 today or any other time in the case.

20 Everyone remain seated while this jury is excused.

21 (WHEREUPON, the jury exits the courtroom at 9:57 a.m.)

22 THE COURT: All right. We're at the point where Mr.
23 Porter has been cross-examining Ms. Liz Stewart on
24 Plaintiff's Exhibit 15, which is a report on fire department
25 officer interviews conducted by Ms. Stewart and her company

1 and been referring to it. And Mr. Porter has moved
2 Plaintiff's Exhibit 15 into evidence.

3 I'll be glad to hear any objection the Defense may
4 have.

5 MS. THYE: Thank you, Your Honor. We object to this
6 report coming in and, quite frankly, any more questions
7 along the lines to elicit hearsay statements as they might
8 be related from Ms. Stewart in that report. Mr. Porter was
9 allowed some latitude to ask questions under the guise of
10 what did she find, what were her findings in the report,
11 which I think are fair game. However, when those bullet
12 points were explained to be statements or quotes from the
13 interviewees, then we get into just plain and simple
14 hearsay.

15 They are being offered here, quite frankly, to turn the
16 trial. Instead of the trial being about Mr. Edmonds and his
17 discharge and defamation, now, we're putting the fire
18 department on trial and Chief Jenkins and his leadership.
19 And, quite frankly, even if it falls under one of the
20 exceptions of hearsay, which I don't think it does, Rule 403
21 would clearly keep it out because it ask the jury to look
22 far afield from where we are.

23 THE COURT: Mr. Porter, I'll be glad to hear from you.

24 MR. PORTER: I'll start with a 403 perspective, Your
25 Honor. This is exceedingly relevant to the negligence claim

1 as it establishes notice and foreseeability.

2 Now, moving back to hearsay from that, that gives us an
3 independent legal reason for wanting this document in. Not
4 for truth of the matter asserted as it will be hearsay
5 potentially. I don't think this is necessarily hearsay
6 because we have A, commentary of officials of a party
7 opponent, but, also, B, that this is an independent report.
8 This is Ms. Stewart's generated report. It's not submitted
9 as necessarily testimony, but what were the concerns these
10 folks had.

11 I, also, believe there's impeachment value here. While
12 I understand what Ms. Thye is saying that we don't want to
13 make this a trial about the department, we are getting --
14 we're casting the results in a pretty docile light in direct
15 examination that are not exactly what the actual results
16 were.

17 Ms. Stewart, and I don't think she's trying to hide the
18 ball, but she says this is all about miscommunication, this,
19 that and the other. There were much bigger fish to fry
20 here.

21 THE COURT: It appears that Plaintiff's Exhibit No. 15
22 is a 62-page document that contains interview logistics or
23 that Stewart & Associates used key findings -- paragraphs on
24 key findings for recommendations -- recommended actions
25 based on their findings and then -- that's the first three

1 pages. Page 4 through 62 appears to be answers or summation
2 of answers --

3 How many people did she interview, was it 108?

4 THE WITNESS: Yes, sir.

5 THE COURT: 108 folks she interviewed. And one,
6 certainly, all of that would be hearsay. Whether there's an
7 exception, I find that the report itself contains, I guess,
8 58 pages of hearsay and then three or four pages of summary
9 by Ms. Stewart. Most of the -- it appears from the Court
10 looking at it, most of the 58 pages are direct criticisms of
11 the department and leadership. I find not only is it
12 hearsay, but even it was admissible, it's more prejudicial
13 than probative under Rule 403. And I'm not going to allow
14 it in.

15 MR. PORTER: Thank you, Your Honor.

16 THE COURT: Let's bring the jury back in.

17 (WHEREUPON, the jury enters the courtroom at 10:04
18 a.m.)

19 THE BAILIFF: The jury is seated, Your Honor.

20 THE COURT: Thank you.

21 Mr. Porter, you can proceed.

22 MR. PORTER: Thank you, Your Honor.

23 CONTINUED CROSS-EXAMINATION

24 BY MR. PORTER:

25 Q And I'll briefly wrap up. I'm not going to ask you

1 what the report says that other people said, but I want to
2 reaffirm on what date did you present this report to the top
3 administration?

4 A It was on or about April 15th of 2016.

5 Q And the city was responsible for determining who that
6 report would be presented to?

7 A Yes.

8 MR. PORTER: Thank you, ma'am.

9 THE COURT: Ms. Williams.

10 MS. WILLIAMS: Yes, Your Honor.

11 REDIRECT EXAMINATION

12 BY MS. WILLIAMS:

13 Q Just briefly, Ms. Stewart, you testified that the city
14 had a sign-up sheet outside of the door for the responders
15 coming to the survey, correct?

16 A Yes.

17 Q To your knowledge, were the responders coming in in
18 order of that sign-up sheet?

19 A Not always. Because of their schedules, they sometimes
20 swapped with each other or -- and there were one or two that
21 missed, but for the most part, yes.

22 Q Okay. So is it fair to say that just because John Doe
23 was number one and Joe Brown is number two, they may not
24 have come in in that order, correct?

25 A That's correct.

1 Q As far as the recommendations that you made, and you
2 stated you made more recommendations other than just
3 communication, all of your recommendations were communicated
4 to the Chief Jenkins, correct?

5 A Yes.

6 Q And what, if any, was his response to those various
7 recommendations?

8 A He accepted them very well. He acknowledged that some
9 of those were areas that he wanted to improve in. I think
10 he was very receptive to it. You know, the discussion that
11 we had in that key stakeholder meeting was appropriately
12 focused on global issues rather than specific comments.
13 And, also, most significantly, a path forward with what
14 could be done to improve the situations in the fire
15 department.

16 MS. WILLIAMS: Thank you, Ms. Stewart.

17 THE COURT: Mr. Porter?

18 MR. PORTER: No, sir.

19 THE COURT: Mr. Stewart, you can step down. Thank you.

20 (Witness steps down.)

21 THE COURT: Ms. Williams or Ms. Thye, call your next
22 witness.

23 MS. WILLIAMS: The Defense calls Chief Aubrey Jenkins.

24 AUBREY JENKINS, after being duly
25 sworn, testified as follows:

1 THE CLERK: Have a seat in the witness stand, please.
2 State your name for the record.

3 THE WITNESS: My name is Aubrey D. Jenkins, D stand for
4 Dale.

5 DIRECT EXAMINATION

6 BY MS. WILLIAMS:

7 Q Good morning, Chief.

8 A Good morning.

9 Q Will you tell us a little bit about yourself, where
10 you're from?

11 A Sure. My name is Aubrey Jenkins. Of course, I'm the
12 fire chief for the City of Columbia. I've been with the
13 fire department for, last week made 40 years that I've been
14 with the fire department. I grew up in Columbia, South
15 Carolina, been here all my life. I graduated from Eau
16 Claire High School. Of course, went to the fire department
17 in 1979. So really enjoy the career.

18 You know, when I first went there, I discovered that --
19 after my first fire, after I saw my first victim, I realized
20 this was serious. And I sought to learn everything I can
21 about the fire service.

22 Q And are you married, Chief Jenkins?

23 A Yes, I am married to the former Vernell Trapp, I made
24 her a Jenkins. We have two children. One son, he is --
25 well, he's a former Marine, fought in Afghanistan. And my

1 other son, he's like a little entrepreneur.

2 Q And tell us a little bit about your life outside. I
3 imagine you're a pretty busy man, but are you a member of
4 any social organizations, churches?

5 A I am a member of the Progressive Church of Our Lord
6 Jesus Christ where I serve as a deacon. I formerly served
7 as the brotherhood chairman, which, you know, we have a
8 men's group there. I served in that capacity about six
9 years and they finally gave me some relief from it. I am a
10 member of the South Carolina Fire Chief Association where I
11 serve as the second vice-president. I'll be president next
12 year -- I'm sorry, first vice-president next year, then I'll
13 serve as the president in another two years. I'm also a
14 member of the Southeastern Association of Fire Chiefs, which
15 encompasses 13 states on the eastern coast. I'm also a
16 member of the International Association of Fire Chiefs,
17 which serve globally and nationally, also, outside of the
18 United States.

19 Q Now, you testified that you've been with the fire
20 department since 1979; is that correct?

21 A Yes, I started February 5th, 1979.

22 Q And take us a little bit through your career in
23 firefighting.

24 A I started out a tailboard firefighter. And in those
25 days -- I say those days because that's what it was, those

1 days. There was no training. Basically, what you did is
2 they took me out back. They gave me a helmet. They gave me
3 some boots. They me some pants and a coat. Then they took
4 me back on the inside and they said, You see that truck? I
5 said, Yes. They said, When you see that truck, you be on
6 your way to move. I said, Okay. I was getting on-the-job
7 training.

8 But again, I served as a firefighter for a couple of
9 years. And I took the test to be what is called a round
10 driver. I passed that test and I was promoted to round
11 driver. After that, I took the test to be engineer, passed
12 that and was promoted to engineer. After that, I took the
13 test to be a captain. Passed that and was promoted to
14 captain. After that, I took the test to be a battalion
15 chief. Passed that and was promoted to battalion chief.

16 And I would grant you, each test I took, the only test
17 I had to take twice was the first level test because I was
18 young and I wasn't really into then. But anyway, after
19 that, I was promoted, appointed, however you want to put it,
20 to deputy fire chief for the City of Columbia. And once the
21 fire chief retired, I was promoted as interim fire chief for
22 about a year. And then a year later, I was promoted to the
23 fire chief position.

24 Q Help us understand your duties and responsibilities as
25 the fire chief for the City of Columbia Fire Department?

1 A As the fire chief, I'm globally responsible for
2 everything that goes on in the fire department. So, I mean,
3 it's meetings, it's budgeting, it's making sure the
4 suppression folks have what they need. We're over the
5 hydrants. I mean, it's just a myriad of stuff. It's almost
6 like a CEO of a company. You know, you're responsible for
7 everything that goes on.

8 Q Do any of your responsibilities extend beyond the City
9 of Columbia, also, the County, perhaps?

10 A Actually, we have a very unique system, one that when I
11 go to chief conferences, we talk about it. And they are so
12 envious -- when I say envious, they wished they had a system
13 like we have. Not only am I responsible for the City of
14 Columbia Fire Department, but I'm responsible for Richland
15 County as well. So we are a combined department.

16 Well, I will tell you one thing about that -- the
17 drawback to that is that I have to respond to two councils.
18 City council, which encompasses seven people, and county
19 council, which encompass 11 people. But I'm up for the
20 challenge. We have a very good relationship with both the
21 city and the county.

22 Q So you hold responsibilities for the city and Richland
23 County, correct?

24 A Over 660 square miles of territory, that's not
25 including Fort Jackson.

1 Q So I'm assuming you're not superman, so you need some
2 leaders and you need staff to help you, correct?

3 A Well, I think sometimes people do think I'm superman
4 because of all the calls that I get sometimes, but
5 absolutely. Definitely got to have staff in place to do
6 that job and to make sure they're providing not just me, but
7 the citizens what they need.

8 Q So you have a command staff, that's your leadership,
9 correct?

10 A I do have a command staff. Presently, I have on my
11 command staff, I do have four assistant chiefs, but there
12 are other members on my command staff as well. I used to
13 have a deputy chief, but I don't have a deputy chief
14 anymore.

15 Q Okay. And what is your expectations of your command
16 staff?

17 A You know, my expectations of my command staff -- and I
18 know people can't be like Aubrey Jenkins and I don't expect
19 people to be like Aubrey Jenkins, but what I do expect is
20 for them to do their job, their responsibilities. They have
21 expectations and I do expect for them to meet up to their
22 expectation. Each assistant chief has a division and what I
23 expect for them to do is operate their division. I'm not
24 saying they've got to operate it like me, but I also feel
25 like they need to be operating as close to my standards as

1 possible.

2 Q Now, when did you come to meet the Plaintiff, Mr.
3 Edmonds?

4 A I think I met Mr. Edmonds several years ago, if I'm not
5 mistaken. I can't recall the exact moment. I think he
6 might have been a firefighter when he came in. I can't
7 remember what rank I was, but I met him several years ago
8 when he first came in the department.

9 Q And was he ever one of your assistant chiefs?

10 A Yes, he was one of my assistant chiefs.

11 Q Before he became one of your assistant chiefs, did you
12 ever have an opportunity to observe his work or his work
13 performance?

14 A He was a division chief and before that, he was a
15 battalion chief. I don't really get out to really observe
16 what they do unless I'm on a fire call with them. And I can
17 say on the fire calls, I put all of my battalion chiefs and
18 division chiefs second to none. I think all of them do a
19 phenomenal job.

20 Q And would that include Mr. Edmonds?

21 A That would definitely include Mr. Edmonds.

22 Q Now, we heard previous testimony that Mr. Edmonds
23 retired and then he reapplied to come back to the fire
24 department. Do you have personal knowledge of that?

25 A Yes. Like Mr. Edmonds, several of us did that, retired

1 and came back. Prior to that -- and I'm going to back up
2 just a little bit if you allow me. When the chief first
3 retired and I was selected to be the interim fire chief,
4 yes, I had several of them at the conference when he
5 announced his retirement. And I did mention to not only Mr.
6 Edmonds, but also several other people that hey, I need you
7 all, I need you all's help.

8 Now, when I first did my memo, it did not include Mr.
9 Edmonds. It include Assistant Chief -- well, he was a
10 division chief then, Helms, and Assistant Chief Tinsley.
11 They were the original people on my memo to bring upstairs.
12 But after a little while, Chief Tinsley and I talked and
13 then we went ahead and brought him upstairs as well, so I
14 included him. So he was acting as the interim assistant
15 chief when I brought him upstairs.

16 So once I got appointed a year later to the fire chief
17 position, I went ahead and advertised, posted those
18 positions being the deputy chief first and then the other
19 two assistant chiefs. Once the application came in, I got
20 two applications for the position that I appointed Mr.
21 Edmonds in and both of them was inside. So I went ahead and
22 selected Mr. Edmonds to fulfill that assistant chief role.

23 Q So after his retirement, just to be clear, you're the
24 one who rehired --

25 A Okay, after his retirement -- and keep in mind, I

1 wasn't the one that told him to retire. So pretty much, I
2 could have not rehired him, that was solely under my
3 purview. But once he reapplied, I did rehire him again.
4 There was two people who applied, one of them was inside and
5 then Mr. Edmonds. Because he had retired, he was considered
6 to be outside, but I did rehire Mr. Edmonds into that role.

7 So not only did I bring him up the first time and gave
8 him the opportunity, I hired him into that position. And
9 then once he retired, I hired him back into that position.

10 Q And just so we're clear, what is the title of that
11 position?

12 A Assistant chief of administration.

13 Q And that would have been a member of your command
14 staff, correct?

15 A That is a member of the executive command staff.

16 Q The executive command staff?

17 A That's correct.

18 Q So in layman's terms for us, can you tell us what the
19 responsibilities are of the assistant chief of
20 administration?

21 A Well, assistant chief of administration, he was more or
22 less responsible -- he had the budget person that worked
23 under that position. He was responsible for budget. He was
24 responsible for the logistics, which encompassed equipment.
25 He was responsible with liaison with our 911 center. He was

1 responsible for the buildings, liaison with the building
2 folks and, also, with the vehicle as well, among other
3 things.

4 Q So you've explained to us what his responsibilities
5 were. Can you tell us what your expectations were of him in
6 that role?

7 A My expectation was no different for Mr. Edmonds than I
8 did for all of my assistant chiefs, and that was you made
9 sure you stayed on top of your responsibilities in your
10 role. And I wanted to make sure that -- and I know we'll
11 probably get into it, I don't want to jump ahead, but it's
12 very important -- I lived in those fire stations for a long
13 time, for 26 years, I lived in them, so I'm not talking
14 about something I have not experienced. And I see the
15 conditions of those fire stations.

16 So my thing, I want to make sure our folks have a very
17 comfortable, pleasant place to dwell in. I want to make
18 sure our equipment is up to par. Those are part of the
19 expectations that I have for this position and, in
20 particular, Mr. Edmonds.

21 Q And not to make any assumptions, but tell us why is it
22 important that the equipment is up to par?

23 A You know, a firefighter without the equipment is just
24 interesting. I mean, there's nothing that person can do.
25 So it's very important. We've got to always try to strive

1 -- we've got some very dedicated men and women that work for
2 the Columbia Fire Department -- I want to say it this way,
3 the Columbia/Richland Fire Department, very dedicated. And
4 we want to make sure that we give them the best of tools
5 because I think they deserve it. When you put your life on
6 the line and you don't have the right tools to operate,
7 there's a problem. And we want to make sure that we provide
8 them the very best of the very best. We don't always do
9 that because of budget constraints, but we've got to always
10 strive to do that.

11 Q And as far as adequate equipment, is it important to go
12 beyond the fire department?

13 A I think it does. Again, the only way I can answer that
14 is it's just important to have the adequate equipment.

15 Q And what about buildings, what's the importance of
16 maintaining the buildings and the fire stations, the overall
17 conditions?

18 A Well, one thing you got to keep in mind is these men
19 and these women -- think about your home. You live in your
20 home, you want to have a decent place to dwell. So it's
21 very important that these facilities be up to par, taken
22 care of so that the members know that you care about them.

23 I have lived in these facilities, again, for 26 years
24 before I went upstairs, 26 years, so I know the importance
25 of being in a nice, clean environment. And it's important

1 to make sure that whatever their needs are that they are
2 there. And that's not only talking about the facilities
3 itself, but even the furniture. I am upset on not so good
4 furniture, hand-me-down furniture that we brought in
5 ourselves. That's not how firefighters ought to live, not
6 at all.

7 Q So did Mr. Edmonds meet your expectations when it came
8 to buildings and facilities?

9 A Mr. Edmonds, at that time, Assistant Chief Edmonds, I
10 would say that he was trying to make it happen, but the
11 expectations fell very short, very short.

12 Q In what way?

13 A Buildings still wasn't up to par. We had issues, we
14 had mold issues, which it's beyond his control, beyond his
15 control, but we had issues. It was just -- you know, the
16 furniture -- it was just a myriad of things that -- I would
17 say that it was just not up to standards for liveability to
18 the point that we even had to brown out a station one time.
19 Brown out means to shut it down.

20 Q And you mentioned that the furniture wasn't up to par,
21 was that something that would have been within Mr. Edmonds'
22 control?

23 A Mr. Edmonds -- that is part of what logistics does.
24 That is part of -- that fell under his purview.

25 Q And did Mr. Edmonds meet your expectations when it came

1 to equipment?

2 A There was -- I would say that the equipment -- there
3 was some issues with some trucks in size and just some
4 mounting -- things that needed to be mounted on the truck
5 that some firefighters were complaining about. So no, he
6 did not meet that expectation.

7 Q Now, Mr. Edmonds testified that he's not a mechanic, so
8 did you expect him to work on the trucks?

9 A I did not expect for Mr. Edmonds to work on the trucks,
10 no, but he was the go-between person between that division
11 and the fire department. But I did not expect him to
12 physically work on the trucks. All I expected for him to do
13 was make sure it got done.

14 Q Now, the Plaintiff testified earlier that at some
15 point, the relationship between the two of you had become
16 strained over the past few years. Did you agree with that?

17 A I can't see how. If he's referring to the fact that he
18 and I didn't communicate a lot. I think at some point, Mr.
19 Edmonds became distant himself. My office is always open.
20 When you walk down the hall, you walk right past -- when you
21 come in the door, you walk right past my office. I have not
22 denied anybody to come see me to talk about any issue at
23 all. What I did expect -- I'm not a micro manager. If I
24 was a micro manager, I'd have all my assistant chiefs in my
25 office probably everyday or once a week. That's not my

1 style. I don't micro manage at all.

2 So certain decisions that needed to be made, I delegate
3 to my assistant chiefs. They are on the executive staff.
4 They should be able to make decisions without having to come
5 to me for every little thing.

6 Q Also, earlier, the Plaintiff testified that during a
7 meeting, you told him something to the effect of, Be quiet,
8 this is my meeting. Do you recall saying that to him?

9 A I do and I did. And I'll tell you why, because he has
10 a habit when we're in meetings -- he had a habit of talking
11 over me, always talking over me. I don't say nothing in
12 those meetings, but when he and I had our own meeting that I
13 did call him to and I don't recall what the meeting was, but
14 he wanted to talk over me. So I said, Be quiet, this is my
15 meeting. I did say that.

16 Q The Plaintiff also testified that he raised some
17 concerns with you regarding taking leave to take a class to
18 obtain some type of certification. Do you recall that
19 request?

20 A I do. And not only did Mr. Edmonds request that class,
21 but somebody before him requested that class and I denied
22 it. The reason why I denied it is because it is not
23 necessary within our department to have that class. If I
24 send you to a class, certainly, we're going to give you the
25 time.

1 Now, I didn't deny that he couldn't go, I just denied
2 giving him the time. Mr. Edmonds could have very well went
3 to the class if he wanted to. He had vacation time just
4 like the other person took their vacation time when they
5 went. And the person before him, when they went, they took
6 their vacation time, which wasn't -- he was actually
7 captain. So I don't deny anybody. I will endorse it, but
8 I'm just not going to pay for it because it is not a
9 necessary class for the fire department. It is a desired
10 class.

11 Now, inside the fire department, you don't need that
12 class to be the fire chief. You don't need it. But if you
13 go someplace else, there are some departments that don't say
14 that you have to have it, but it is desired if you have it
15 if you look at most applications.

16 So yes, I did deny it. But Mr. Edmonds could have took
17 any class that he wanted to as long as it was within -- as
18 long as it's something that we endorse or how you want to
19 say it. But that was one class that was a desired, it
20 wasn't a needed class. I don't have the class because I
21 don't need it.

22 Q Another concern that the Plaintiff raised regarding an
23 employee who was on extended leave past 180 days. Do you
24 recall that situation?

25 A I do. But then again, that fell under Mr. Edmonds'

1 purview. He could have very well taken that person off of
2 that lead because he have to approve it. That fell under
3 his purview, so if he wanted to, I wouldn't have said a
4 word. I don't want to make every decision for everybody all
5 the time. So if he wanted to take that person off the lead,
6 he could have very well done it.

7 Q Now, we had Ms. Liz Stewart come in earlier and she
8 talked about the report that Stewart & Associates did. And
9 from your knowledge, what was the purpose of that study?

10 A There was things going on in the department. And keep
11 in mind, the fire department is one of the most unique
12 brotherhood you're going to ever be a part of. There were
13 things going on that would never get to my desk. There were
14 things going on that would stop short of getting to me.
15 There were things going on that nobody would tell me about. -

16 So, in essence, what happens is your department feel
17 like you kind of out of touch and I did feel like I was out
18 of touch. And when I saw it, I really felt like I was out
19 of touch because I did not know half the stuff that was
20 going on. I'm not in every station. Certainly, I can't be
21 in every station. But when the survey came out, I was like,
22 um.

23 But I do know there was some issues going on in the
24 fire department. Not only with things going on with the
25 fire department, there were leadership issues, there really

1 were, and there are the things we had to fix. There was
2 communication issues, those were the things we had to fix.

3 Q Now, were there any specific criticisms of you in that
4 report?

5 A Absolutely. Absolutely.

6 Q And what were your reactions to those?

7 A What I did when I saw things that were pointed to me, I
8 didn't look at my staff, I didn't look at any of them. I
9 looked at me. And the first thing that I knew I had to do,
10 I had to fix me. I had to fix me. And that's what I
11 started to do. And that's what I did, I fixed me first.
12 Afterwards, what I did, I actually took my --

13 Well, let me back up. We made some changes. The
14 deputy chief was transferred to another department. And
15 after he was transferred to another department, instead of
16 me having a deputy chief and three assistant chiefs, what I
17 decide -- because keep in mind, that layer of supervision
18 was kind of overseeing those assistant chiefs. But what I
19 decided to do is instead of having that layer in there, I
20 had all the assistant chief reporting directly to me.

21 So instead of reposting jobs for a deputy chief, what I
22 did, I posted for an assistant chief of operations. Once we
23 hired that assistant chief of operations and then went
24 through a very mundane process, I can tell you right now, so
25 he earned it, he earned it. Once we completed that process,

1 I actually took all my assistant chiefs, all four of them,
2 and the division chief, these are the chief commanders, I
3 took them to Aiken, South Carolina, on a two-day retreat so
4 we can talk through some things so we can get ourself
5 together. And Mr. Edmonds, as assistant chief, was part of
6 that retreat.

7 So even after the report came out and I saw all the
8 criticism of me, you know what, one thing I've learned in
9 this position, if you in this position, you got to be able
10 to bear it because people going to talk about you. People
11 that don't know you going to talk about you. People that do
12 know you are going to say things because they don't know,
13 they only surmising. And one person going to say this and
14 guess what, it's like a wildfire. When a wildfire gets
15 started, it starts that big. But guess what, by the time it
16 get to the end, it's done burn up a hundred, 200, 300 acres.
17 And that's the way it was. But I looked at me and I fixed
18 me and I'm continuing to fix me.

19 Q And during the time of the survey or even after the
20 report was made, did anyone ever tell you what Michael
21 Edmonds said to Ms. Stewart during his responses to the
22 survey?

23 A Nobody told me what Mr. Edmonds said. Some things I
24 can figure out just by what they were always saying. I
25 mean, they were saying these things. So quite naturally,

1 when you see it, you're going to figure out -- now, I don't
2 which command staff said it. I didn't contribute anything
3 to Mr. Edmonds, but I know what my command staff was
4 thinking. They would tell me, well, the last person in the
5 chief's office is who gets what they want, which really was
6 not true. That's what they were saying. That's what they
7 said.

8 What I always thought -- and sometimes thinking can get
9 you in trouble because when you think, you probably just
10 don't know. When they would have their meetings apart from
11 me, then somebody would come in my office and say well, we
12 talked about this and this is what we want to do. And I
13 would say okay, if that's what y'all want to do, I'm okay
14 with it. But then again, then somebody say well, that ain't
15 what we said. But they don't come and tell me. It's just
16 well, I talked to the chief. Well, because it was in your
17 area, I'm thinking that all of y'all have vetted it, you
18 talked about it because I did not meet with them all the
19 time. They actually met with themselves.

20 Now, I wanted to meet with their groups, but they met
21 -- my deputy chief, my assistant chiefs, they met together.
22 They would go to lunch together and discuss stuff. I didn't
23 go to lunch with them. And that's where they did a lot of
24 their discussion. But one would come in my office and say
25 this is what I want. But it was in their area and because

1 it was in their area of responsibility, I say okay, go ahead
2 and do it, but you own it.

3 Q Now, throughout the course of this trial, we've talked
4 about some gloves that were ordered by the fire department.
5 Did you have an opportunity to review those gloves when they
6 arrived?

7 A I didn't review them when they first arrived. And I
8 think to really understand our procurement, we put in what's
9 called -- well, I don't, but I have my administrator put in
10 what is called a work flow. And when they put in a work
11 flow, they're saying that they're going to purchase this or
12 purchase that and I sign off on it. Why? Because I've got
13 full confidence in my command staff. I don't question them.

14 At one point now, I did tell my budget person --
15 because I held two people responsible, that was my budget
16 person and Assistant Chief Tinsley. And I would tell them
17 that. I hold them wholly responsible. So when it come to
18 my work flow, I sign off on it because everybody had done
19 vetted it and this is what we're going to purchase.

20 So when the gloves came, I heard all this chatter about
21 hey, you know, why did we buy these gloves? What did we get
22 these gloves?

23 Q Let me stop you there, Chief.

24 A Okay.

25 (Defendant's Exhibit No. 2 marked for identification.)

1 BY MS. WILLIAMS:

2 Q I just handed you what's marked as Defendant's Exhibit

3 2. Do you recognize what that is?

4 A Yes, I recognize these.

5 Q What is it?

6 A These are gloves.

7 Q And how do you recognize those gloves?

8 A These were the gloves or a copy of the gloves that I
9 asked someone to bring to my office because I'm hearing
10 about gloves that were purchased that create all these
11 chatter about these are not good gloves and this is not the
12 ones that we did in the latest wear test. So I asked them
13 to bring these gloves to me.

14 Q Okay.

15 A And when I looked at them, I'm like okay, what's wrong
16 with them.

17 Q Now, are those gloves that you have in your hand, do
18 they appear to be the same gloves that you saw in 2017 in
19 your office?

20 A Yes.

21 Q Okay. You can continue. You were talking about
22 chatter about the gloves?

23 A Yes. So as I begin to -- when I got the gloves, I
24 didn't think much of it, to be honest with you. But as I
25 began to examine and I saw the inscription on the inside of

1 these gloves, it said these gloves are not meant for
2 firefighting. So that really gave me concern.

3 Let me tell you why my pet peeve is on gloves in this
4 particular case. As a firefighter, I went into a lot of
5 burning buildings. I fought a lot of car fires. I can
6 remember one particular time when I fought a car fire. It
7 was a Volkswagen. Volkswagen engines catch on fire. But
8 this particular Volkswagen, the fuel line ruptured and it
9 started spewing gas and it spew gas on my hand -- well, on
10 my gloves that I was wearing. Had it not been for them
11 gloves, my hands would have been burned. Our hands are our
12 tools. Yeah, firemen got tools, but our bodies got tools,
13 too, and they're our hands.

14 Another incident, I'm fighting a fire. I'm on the
15 second story of a burning house, second floor, fire burning
16 up under me. I didn't know it. I'm doing my job. And the
17 fire was burning so intense that the floor gave way and I
18 fell. One thing saved me, a window. I caught my hand on
19 the window. And if I wouldn't have caught that window, I
20 would have fell in that fire. I didn't have on no gloves
21 and I cut my hand. I had to get stitches. But it's better
22 for me to get cut up than burnt up. So my thing is, I want
23 to make sure our firefighters got the best. That is my job.

24 But these particular gloves, yeah, that did give me
25 some concern because I can always reflect back on to when we

1 did some stuff that wasn't so safe.

2 Q Now, you testified that those gloves were purchased
3 based upon a recommendation, correct?

4 A Through work flow.

5 Q Through work flow?

6 A Yes.

7 Q Who was responsible for the recommendation of those
8 gloves?

9 A At that time, Assistant Chief Edmonds because he was
10 over logistics. And we did all of our purchasing equipment
11 through logistics.

12 MS. WILLIAMS: Your Honor, at this time, I would move
13 that Defendant's Exhibit 2 be introduced into evidence.

14 MR. PORTER: I probably have no objection, but I'd like
15 to look at them.

16 THE COURT: Let's allow Mr. Porter to look at them.

17 I tell you what let's do, this is probably a good time
18 to take a break. We've been at it for more than an hour and
19 a half.

20 Ladies and gentlemen, I'm going to allow you to go back
21 to your jury room, refresh yourselves. This will be about a
22 10 or 15-minute break and we'll have you back in here again.
23 I instruct you to have no discussions about the case
24 whatsoever.

25 Everyone remain seated while the jury is excused.

1 (WHEREUPON, the jury exits the courtroom at 10:45 a.m.)

2 MR. PORTER: I don't have any objection.

3 THE COURT: All right.

4 (Defendant's Exhibit No. 2 was admitted into evidence.)

5 THE COURT: All right. We'll take about a 10 or
6 15-minute break.

7 Chief Jenkins, you can step down. I need to remind
8 you, though, that you're under oath and you're not allowed
9 to discuss any testimony that you've given so far or any
10 future testimony with your lawyer or anyone else while
11 you're under oath.

12 THE WITNESS: Yes, sir.

13 THE COURT: We'll be at ease for about 10 or 15
14 minutes.

15 (Short break.)

16 THE COURT: Plaintiff ready?

17 MR. PORTER: Yes, Your Honor.

18 THE COURT: Defense ready?

19 MS. WILLIAMS: Yes, Your Honor.

20 THE COURT: Let's bring the jury in.

21 (WHEREUPON, the jury enters the courtroom at 11:04
22 a.m.)

23 THE BAILIFF: The jury is present, Your Honor.

24 THE COURT: Thank you.

25 Ms. Williams, your witness.

1 BY MS. WILLIAMS:

2 Q Chief, when we left off, we were talking about the
3 gloves. And you have a pair of the gloves up there. Now,
4 we heard testimony from the Plaintiff that you told him that
5 the gloves were the final straw. So that leads us to assume
6 there was another straw before that. What issues, if any,
7 predated the glove issue?

8 A It was just the facilities. And I would tell you, he
9 and I, in our conversation -- and stop me if I can't say,
10 but he came to me himself and said that he feel like people
11 wasn't listening to him. He feel like he couldn't get
12 anything done. And for some reason, he just shut down.
13 We'd be in meetings and he wouldn't say anything. He just
14 shut down.

15 So in an effort to help him out, I would always try to
16 encourage him. Hey, man, don't worry about. I did say, you
17 know, you are like the Nike commercial, just do it. Don't
18 get discouraged. I would always try to encourage Mr.
19 Edmonds, always. But yeah, the glove was kind of the --
20 when I read the inscription on it, that was kind of the
21 final straw.

22 Q We also heard testimony about a confidential e-mail
23 that the Plaintiff sent to Senior Assistant City Manager
24 Baker. How did you feel about Edmonds sending that e-mail
25 to Reverend Baker?

1 A That was the same e-mail he sent to me. So, to me, it
2 wasn't confidential because he had already sent it to me and
3 Deputy Chief Tinsley at the time before he even sent it to
4 them. So, to me, it wasn't confidential. I mean, I never
5 told anybody about it. When we got the e-mail -- because it
6 was addressed to both of us.

7 When we got the e-mail, Chief Tinsley came to me that
8 morning and said, Did you see the e-mail that came from
9 Chief Edmonds? So, obviously, he and I can talk about it.
10 We didn't talk about it outside of that. The person that it
11 was in reference to, I didn't even tell that person.

12 And the reason why I didn't because I didn't see that
13 side of that person. I know the conversations that we had
14 with that person about the things that he needed to do. And
15 I can tell you, that person was working diligently,
16 diligently to fulfill those needs. But all that was not in
17 Mr. Edmonds' purview, so I did not address it with him.

18 Now, again, I had a deputy fire chief that was meeting
19 with them, so I don't know if he addressed it with him or
20 not. It was sent to both of us, so either one of us could
21 have addressed it.

22 Q Did it anger you that Edmonds sent the e-mail to Baker?

23 A Well, I will tell you like this, that is an issue that
24 he sent to me. And I did ask him why would he send an
25 e-mail to my boss on something that he had already sent to

1 me. He didn't followup and say well, what are we going to
2 do about it. He just sent the e-mail. So I did question
3 him on it. I did, but it wasn't like I was blowing up. No,
4 I didn't blow up at him. I asked him a question.

5 Q And we're going to switch gears a little bit. While
6 employed, the Plaintiff was provided with uniforms, correct?

7 A That's correct.

8 Q Who pays for those uniforms?

9 A City of Columbia.

10 Q And the Plaintiff was provided with a vehicle?

11 A That's correct.

12 Q Did firefighters own those vehicles?

13 A I have a vehicle. I don't own it. It belongs to the
14 City of Columbia.

15 Q And what happens to those vehicles when someone leave
16 the fire department?

17 A When someone leaves, regardless of what the
18 circumstances is, it reverts -- that vehicle is transferred
19 to whoever come into that position. But it comes back to
20 the City of Columbia. We don't own the vehicles, no.

21 Q The Plaintiff's wife testified that he was humiliated
22 because he no longer had this city vehicle. Was it your
23 intent to humiliate him by taking by the vehicle?

24 A I had no intent whatsoever to humiliate Mr. Edmonds in
25 any way, shape or form. That was not the intent.

1 Q Was the Plaintiff also provided with a city cell phone?

2 A Yes. We have a city-issued cell phone that we get at
3 that level, yes.

4 Q And do the firefighters own those cell phones?

5 A No, the firefighters do not own them. Those phones
6 belong to the City of Columbia.

7 Q And what happens to those phones when personnel leave
8 the fire department?

9 A When the personnel leave, then they have to turn the
10 phone back into the City of Columbia.

11 Q Okay. And that rule applies to everyone; is that
12 correct?

13 A That rule applies to everyone, including me.

14 Q We also heard testimony about a blog or post throughout
15 this trial. What effect, if any, did that blog have on your
16 decision to ask for the Plaintiff's resignation?

17 A None. Blogs -- I don't get into blogs. Now, somebody
18 did bring it to me and showed it to me, but I didn't pull it
19 up. Matter of fact, I believe I was out of town when it
20 went out and somebody told me about it when I got back in
21 town and showed me a copy. And my words to that was, I
22 don't worry about this stuff. And I don't. I know people
23 post stuff, people put stuff in the newspaper.

24 And one thing I have learned, my good friend, Leon
25 Lott, told me this, he said that if you sit around and read

1 that stuff, it'll get in your spirit and you're going to be
2 miserable. So I learned not to even entertain that stuff.
3 When comments are made -- people make comments about me all
4 the time, but I don't let that stuff get in my spirit.

5 I understand at my level in the position that I hold,
6 these things are going to happen. People are going to say
7 stuff. They're going to talk about me. They're going to
8 talk about all of us. They're going to talk about the fire
9 department. People do that all the time. I might go out
10 here today and might be a post on the fire department, I
11 don't know, but I can't let that get in my spirit. It did
12 not bother me one bit. And my picture, my picture was in
13 the blog.

14 Q And I have to apologize, I got a little bit ahead of
15 myself. There came a time when you asked the Plaintiff to
16 resign, correct?

17 A I did.

18 Q Can you walk us through that? Why did you ask for his
19 resignation?

20 A Because I felt like -- I really felt like he was being
21 ineffective at that time. I felt like he couldn't get
22 things done. Even his own words to me he felt like he
23 couldn't get things done. I wanted to give him a way out
24 and I felt like that was a way out.

25 Q Now, the Plaintiff also testified that he begged you

1 for other positions within the department; is that correct?

2 A If I can recall, I do know -- he did send me an e-mail
3 and I think we did talk on the phone. I really don't
4 remember if we talked on the phone or not. But he sent me
5 an e-mail that morning and he said that there are other
6 positions and he could do other things in the department.
7 And I never responded to him in that e-mail. That
8 afternoon, he sent me his resignation, but I didn't respond.
9 I never responded to his e-mail because he put it in writing
10 to me. I didn't respond. As a matter of fact, I think I
11 might have saw it sometime that afternoon and then -- I
12 think it came like that morning and then I think, if I'm not
13 mistaken, I don't know around 2 or 3 o'clock, whatever time
14 it was, that's when the next e-mail came, when he sent me
15 his resignation.

16 Q So between the time of the e-mail asking to be placed
17 in another position and the resignation, did you consider
18 putting him in another position?

19 A I did not.

20 Q And why not?

21 A Because -- one thing I want you to keep in mind with
22 this, I hired him -- he retired. I hired him back into an
23 executive officer position, so I was not going to demote him
24 into a lower level position when I've got people that are
25 ready to move up into a position. Now, keep in mind, we

1 didn't have any ready at that time, but we were going to be
2 testing folks. And I did not want to put him in a lower
3 level position.

4 The things that happen in a department and all this
5 chatter about what he's doing, I really didn't want to put
6 him in that predicament or in that position. I feel like I
7 would have been doing him a disservice. So I wanted to give
8 him an opportunity to resign or retire a second time. I
9 wanted to give him the opportunity. But no, I was not going
10 to put him in a lower position.

11 MS. WILLIAMS: I have no further questions. Please
12 answer any questions Mr. Porter has.

13 THE COURT: Mr. Porter.

14 MR. PORTER: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. PORTER:

17 Q Chief, I'm going to try to start at the beginning of
18 your testimony and work my way back up. First off, you've
19 been talking a lot and you probably don't drink water as
20 much as I do, but would you like some water?

21 A I have one, thank you.

22 Q Now, you said what you expect of your assistant chiefs
23 is that they meet your expectations; is that correct?

24 A That's correct.

25 Q And you said that Michael Edmonds was not meeting your

1 expectation; is that correct?

2 A Yes. At the end, yes.

3 Q Do you remember giving me a deposition under oath back
4 in October of 2018?

5 A I do.

6 Q Did you tell the truth in that deposition?

7 A I did.

8 Q Do you recognize the folder, if you will, that I just
9 gave to you?

10 A Yes.

11 Q Can you tell us what it is?

12 A This is the deposition of Aubrey Jenkins.

13 Q Back when you took this deposition, that was closer in
14 time to everything that happened, wasn't it?

15 A Yes.

16 Q And your testimony is that Mr. Edmonds at the end of
17 his employment was not meeting the expectations of his
18 employment?

19 A Yes.

20 Q And he fell very short with respect to facilities?

21 A Yes.

22 Q And he also fell short with respect to trucks,
23 logistics, equipment?

24 A Yes.

25 Q Will you turn with me to Page 6?

1 A Got it.

2 Q I'm going to start with Line 14, I asked you the
3 question: Is he good at his job?

4 Please give us your answer at Line 15?

5 A Line 15?

6 Q Yes, sir.

7 A I've got to count down. Where is it?

8 Q There should be lines on the left-hand side, sir. Oh,
9 sorry, sir. Those are the exhibits. These are the
10 depositions.

11 Sorry about that, Chief. Do you see what I'm talking
12 about now?

13 A Yes. And I said, I thought he was good.

14 Q Now, on Line 16, I said, Okay, did he meet the
15 expectations of his job?

16 Will you read your answer on October 10th, 2018, to the
17 jury?

18 A I said, Yes. Because at that time, in the beginning,
19 he was.

20 Q Sir, did my question ask you about the beginning?

21 A It did not.

22 Q This retirement thing, you also retired and came back?

23 A I did.

24 Q You mentioned a few things, the word liaison, the word
25 beyond his control. To clarify for the jury what you meant

1 by that is fleet services and building services are
2 departments that are outside of the fire department; is that
3 correct?

4 A They are outside of the fire department, correct.

5 Q So what Michael Edmonds could essentially do is be the
6 squeaky wheel, petition these people to get the stuff done,
7 right?

8 A What Michael Edmonds can do is make sure these
9 departments outside of our departments are doing what
10 they're supposed to be doing.

11 Q Does he have oversight authority over those
12 departments?

13 A He has no oversight authority, but he's certainly got a
14 chief that if these things are not getting done that I could
15 be the squeaky wheel.

16 Q And Chief, you mentioned the door was always open to
17 Michael, correct?

18 A That's correct.

19 Q Exhibit 5 is an e-mail that Michael testified followed
20 various requests for you to sit down and meet with him over
21 lunch or coffee to talk about y'all's issues. Did you ever
22 do that?

23 A Me and Mike didn't have to meet for lunch or coffee to
24 talk about our issues. He could very well have walked into
25 my office. First of all, I'm not a big coffee drinker and I

1 do a little lunch, but not a whole lot because I be busy.

2 So he could have very well walked into my office at any time
3 he wanted to, it didn't have to be over lunch or coffee.

4 Q Could have been over tea?

5 A No, I'm not a big -- I do like unsweetened and sweet
6 together.

7 Q There you go. Your testimony with respect to this
8 meeting on July the 5th of 2016, the "be quiet" meeting.
9 Your testimony was you don't remember what that was about?

10 A I'm sorry, which date?

11 Q July 5th, 2016. The meeting where you were asked about
12 the "be quiet" statement. Did you say you don't remember
13 what that was about?

14 A I'm trying to remember what we were discussing. I've
15 been in so many meetings, I'm just not clear on what the
16 contents of the meeting was.

17 Q That's fair enough. Was that, perhaps, the meeting
18 where y'all talked about the documents he had sent to
19 Allison Baker?

20 A It could very well have. Because I do remember us
21 having that meeting, but I don't remember what the exact
22 date was, so it very well could have been.

23 Q Your testimony is that this talkative guy was
24 interrupting you and that's why you said, Be quiet, this is
25 my meeting?

1 A At that time, Chief Edmonds had a habit, even when we
2 would be in staff meetings, of trying to overtalk me. And
3 absolutely, I told you before, I did say that. Because it
4 was my meeting and I needed him to listen.

5 Q Can you hand me one glove so we're both working from
6 the same sheet of music, if you will?

7 A (Witness complies.)

8 Q I want you to pull up your glove -- first, let me ask
9 you, your biggest beef with this glove is that it was not to
10 be used for firefighting, was that your testimony?

11 A I guess one of my -- not only that, but when I learned
12 that even in the wear test that this is not one of the
13 gloves that was recommended in the latest wear test, yes, I
14 had some concerns with that.

15 Q Sure, but you told the jury just now that this glove
16 wasn't to be used in firefighting, correct?

17 A I did.

18 Q Read to me the very first line of the -- I don't know
19 what you call these things.

20 A Which one are you talking about?

21 Q Page 1, Line 1. Beginning "this structure"?

22 A It says: This structure firefighting protective glove
23 meets the glove requirement of NFPA 1971 2013 edition.

24 Q What's the NFPA?

25 A That's the National Fire Protection Agency.

1 Q Now, to be fair, it does have a warning on the second
2 page, right?

3 A Absolutely.

4 Q And that, basically, says that if you hold your hand in
5 this glove over a fire, eventually, it's going to get hot,
6 right?

7 A It don't say that. Those are not the words on this
8 glove. It says: Danger, and it goes on to say this
9 protective glove will not protect you from all hazards
10 encountered during emergency operations, especially
11 firefighting.

12 Q Is that any different than what I just said in more
13 simplistic words?

14 A I wanted to make it clear to the jury.

15 Q Okay. Let's look at the investigative report about the
16 gloves. Now, did you ever see this in real time?

17 A I may have. Probably, I was briefed on it.

18 Q And what's the date of the reporting being completed?

19 A It says date completed 5/30/17.

20 Q And the investigator who did this, Matthew Jenkins,
21 he's good at his job?

22 A I think he's good at his job, but he was fairly new
23 with us.

24 Q He was being overseen by George Adams?

25 A He worked in the fire prevention. Yes, he was overseen

1 by George Adams.

2 Q And George Adams is good at his job?

3 A I think George Adams is good at his job.

4 Q George Adams is going to make sure his subordinate
5 officer does a good job in a report such as this, correct?

6 A Yes, I think any supervisor makes sure their
7 subordinate do a good job.

8 Q Does it say anywhere in this report -- well, first off,
9 this report is all about the gloves?

10 A I haven't read it in its entirety, but I think it is.

11 Q Do you know if it says anywhere in this report that the
12 gloves are not to be used in firefighting?

13 A I don't know. I'd have to read his report and see.
14 But certain things don't have to be said in a report when
15 you've got the evidence before you.

16 Q You don't think that would have been a pretty big thing
17 to include in the report on the gloves?

18 A I think so, yes, I do. But again, when I've got the
19 evidence before me, I can see it for myself.

20 Q Newton's Fire Service, y'all have bought some stuff
21 from them in the past, sir?

22 A We have, yes.

23 Q They typically do a good job?

24 A As far as I'm concerned, they do. I don't deal
25 directly with Newton. Again, that is all with the

1 logistics, which Chief Edmonds was over. So he, more or
2 less, dealt directly with Newton, with all the vendors. I
3 don't.

4 Q Y'all still bought from Newton after Edmonds, right?

5 A Sure.

6 Q And fire stuff is what they do, correct?

7 A As far as I know, absolutely.

8 Q You think Newton's Fire Stuff would have sent the City
9 of Columbia \$60,000 worth of gloves that can't be used in
10 firefighting?

11 A Well, let me tell you about Newton's. Newton is a
12 salesman. You know, you can go to the car lot and buy a
13 lemon and the car dealer ain't going to tell you it's a
14 lemon because he want to make the sale. So Newton, he
15 distributes for a company. He wants to make the sale. But
16 what he did, once we recognized it, he took those gloves
17 back.

18 Q If he had sold you a lemon, would you have kept buying
19 cars from him?

20 A Well, you know what, we buy Kears trucks and they
21 throwed us a lemon and they made it right and we still buy
22 trucks from them. Newton's made it right, so absolutely, he
23 have some good product, so we going to go back.

24 Q Newton is an honest guy in your experience?

25 A Do I think he's an honest guy?

1 Q In your experience, if you've had experience?

2 A I have not had experience with Newton's because I don't
3 deal with the vendors. That is not what I do. I don't deal
4 with the vendors.

5 Q That's fine, Chief. I get that. Are you aware --
6 talking about the period in between Michael's e-mail to you
7 asking you for a job, any job, that sort of thing and his
8 resignation e-mail later that day, I think we're talking
9 Friday, the 7th, were you involved in any communications
10 with HR officials about what they were saying to Michael?

11 A No. The only communication I got what he was saying to
12 HR was what Mr. Edmonds sent me himself. I think he
13 addressed it to me and Colleen, if I'm not mistaken. But
14 no, I'm not aware of what he said to HR other than what he
15 sent me in the e-mail.

16 Q What position does Gardner Johnson hold?

17 A Gardner Johnson is the HR -- I guess he -- I don't
18 know.

19 Q Let me ask it this way --

20 A I mean, I don't know what his official title is, but he
21 is kind of the person that deals with the employees with
22 grievances and all that good stuff.

23 Q And you're the chairman of the grievance committee,
24 right, sir?

25 A I am the chairman.

1 Q So Gardner, is he the top official with respect to
2 grievances in HR other than you as the chairman of the
3 committee?

4 A Gardner is not the top official, I think that would be,
5 more or less, the HR director.

6 Q Ms. Benjamin?

7 A Right. Because he works under Ms. Benjamin.

8 Q With respect to grievances, would you consider him
9 second in command to Ms. Benjamin?

10 A I can't sit here and say where he fall in line because
11 I honestly don't know. I would imagine there are other
12 supervisors in HR, so I don't know where Mr. Gunnells fall
13 in line.

14 Q That's fair enough, Chief. And you agree with me that
15 what you said on July 5th, 2017 was that with the
16 maintenance issues and now the gloves issues, the last
17 straw, I need to have your resignation?

18 A I agree with you on that.

19 Q Let me give you back your glove before I keep it.

20 A Okay.

21 Q You would agree with me that Exhibit 12, the internal
22 investigation, cleared Michael with respect to the glove
23 issues on May 30th, 2017?

24 A Let me tell you about your internal investigations.
25 The investigator don't clear anybody. It's up to -- if it's

1 the police chief, then he say whether it's sustained. He
2 makes that determination. I have never made a determination
3 on this at all.

4 Q Do you agree with me that you have no knowledge that
5 Michael Edmonds was not doing everything within his power
6 with respect to his duties to liaison with the facilities,
7 correct?

8 A I can't say that he was not doing everything within his
9 powers. I can't say that. All I know is that things were
10 not getting done.

11 Q All right. And just to clarify again, he doesn't have
12 the authority to do that without facility services, which he
13 does not control, omitting the time, man hours and money,
14 correct?

15 A I will agree with that. But again, he was responsible
16 for making sure that we hold those people accountable. And
17 if they don't do it, then we got other avenues.

18 Q To clarify your testimony earlier, let me trade
19 exhibits with you.

20 A Which one.

21 Q Give me what you've got and I'll give you the right
22 one.

23 A Okay.

24 Q Earlier, you were testifying that the e-mail chief sent
25 to Allison Baker, he had already sent to you. Now, I've

1 handed you Exhibit 8, the e-mail he sent to Allison Baker.
2 To clarify, I'll submit to you that the e-mail he had
3 already sent to you was an attachment to Exhibit 8, but
4 Exhibit 8 was not sent to you. Do you agree with that
5 clarification? And if you ask me to repeat that, I'm not
6 going to be able to.

7 A No, you ain't got to repeat it. This was not sent to
8 me.

9 Q Okay. How is it marked?

10 A Confidential.

11 Q And --

12 A It says sensitivity confidential.

13 Q And Allison Baker told you that Edmonds had sent you
14 this information, correct?

15 A What Allison Baker did is what any supervisor ought to
16 do. When there are concerns that comes up, he going to
17 address it. He addressed his concerns with me. He didn't
18 give me the contents of everything that was in this e-mail
19 other than addressing me to make sure that I can address
20 issues. But he didn't give me no contents. That's what
21 Allison Baker do.

22 Q Did Reverend Baker tell you that he had asked Michael
23 Edmonds for the documentation?

24 A I don't recall if he said that. He may have.

25 Q Well, if he had told you he had asked Michael Edmonds

1 for the documentation, you would not have needed to meet
2 with Michael Edmonds to ask him why he sent the
3 documentation, would you?

4 A Mr. Baker, just like he said, he wanted us to meet to
5 down and talk. And yes, I did ask him why would he send an
6 e-mail -- and I wasn't talking about this particular one. I
7 was talking about the one that he sent to me and Deputy
8 Chief Tinsley. Because he made some pretty strong
9 accusations in there.

10 Q Sure. And you said that in the meeting, that he made
11 some pretty strong accusations in there?

12 A Yes.

13 Q But what I'm trying to get back to, it would have been
14 a silly question to ask Mr. Edmonds why he sent the
15 documentation to Mr. Baker if Mr. Baker had told you Mr.
16 Edmonds asked for it, correct?

17 A Well, I have to respectfully disagree with that.
18 Because when you want an answer, no question is silly. I
19 just have to really respectfully disagree with you on that.

20 Q Okay. You agree with me that before this or around
21 this time, people below you had said things to you to the
22 effect that, according to them, Edmonds was trying to push
23 you out?

24 A Well, that didn't really come from people -- well, let
25 me rephrase that. Some people thought that, but this was

1 like known even around the state. I heard this outside the
2 department. People were saying that. But it did not bother
3 me. I'm a lot stronger than what you giving me credit for.
4 It did not bother me.

5 You know what, I want somebody to succeed me. I got 40
6 years in this place. And even the children of Israel roamed
7 the desert for 40 years and God finally gave them rest. So
8 at some point, I'm going to take my rest. I want people to
9 succeed me.

10 Q I appreciate that, Chief. Now, with respect to this
11 meeting again, you agree with me that you asked him why he
12 sent that e-mail?

13 A And he told me. He said because he asked for it.

14 Q You told him, You made some pretty big accusations in
15 that letter?

16 A In the letter that he sent on individual, yes, not in
17 this letter.

18 Q You said, Be quiet, this is my meeting?

19 A Because he was trying to overtalk me and that isn't the
20 first time he did that and he did it openly. And because it
21 was me and him, that's why I said it, because it was me and
22 him. And yes, he was trying to overtalk me.

23 Q And that's three of the four primary things that Mr.
24 Edmonds said you said. The fourth, you disagree with. You
25 disagree that you said, You know how powerful I am, correct?

1 A I do not have to sit here and say I'm a powerful person
2 because I never made that statement to him. Now, he's made
3 that statement to me before, but I -- I would never tell
4 anybody that I'm a powerful person. I've got a authority,
5 but I would never say that I'm a powerful person. And I
6 would never even tell you that I've got all this authority.
7 I'm probably one of the most humblest persons you going to
8 meet when it comes down to me. I really am. I would never
9 say that.

10 Q Chief, I'm going to hand you another exhibit. I've
11 handed you what's been marked as Plaintiff's Exhibit 4. I'm
12 just going to paraphrase so we can save time.

13 A I understand.

14 Q You agree that you sent an e-mail saying something to
15 the effect of why am I being copied -- or why is a
16 subordinate being copied on an e-mail questioning my
17 decisions when Mr. Edmonds is asking you about PFO issue,
18 correct?

19 A My exact comment here is --

20 THE COURT: Let's identify what exhibit this is.

21 MR. PORTER: Four.

22 THE WITNESS: So you want me to read what I sent back
23 to him, right?

24 BY MR. PORTER:

25 Q Really, I just want you to answer the question. Did I

1 paraphrase --

2 A I'm going to answer it to you.

3 Q Yes, sir. And I'm not --

4 A Why am I being questioned in an e-mail with my
5 subordinate being copied? I am quite aware of how we
6 operate. I believe it would have been best served to
7 discuss this with me.

8 He sent me an e-mail questioning why I won't let him go
9 to this class, which I clearly explained in the beginning
10 that this is not a class that is sanctioned, required or
11 even needed to be the fire chief or any position in the City
12 of Columbia Fire Department. So I did not only deny the
13 person who he copied in this, so I don't know what he was
14 trying to prove, but I denied him, too. Not only did I deny
15 them two, but I denied somebody else.

16 And I have no problem with anybody furthering their
17 education, but you're not going to do it on the City dime if
18 the City is not sponsoring it. And that's what I did with
19 him and that's what I did with two previous people, one that
20 he don't even know about.

21 Q After Mr. Edmonds got your e-mail, he apologize in
22 person for offending you and in writing, correct?

23 A He sent me an apology in writing and if I'm not
24 mistaken, I believe he did apologize in person.

25 Q And this PFO program, to summarize, y'all don't require

1 it for people to be chief, but some departments do look on
2 it as something they would like to see for him to be a
3 chief?

4 A Some departments, it's desired. And most of it, it's
5 desired -- now, a lot of them, they do require it. But it's
6 a desired position. But the City of Columbia Fire
7 Department where Mr. Edmonds was employed, we did not
8 require nor did we desire that program.

9 Q Chief Jenkins, your testimony was that you didn't care
10 about this blog post at all?

11 A Let me be clear, I did not care about that blog. When
12 it was brought to my attention, I told the people that
13 brought it to me, I'm not concerned about this. They were
14 concerned about it, but I was not. Again, people going to
15 put what they want in a blog.

16 Q Chief, would you turn in your deposition to Page 41?

17 A (Witness complies.)

18 Q And I'll submit to you, but you can back check me, that
19 we're talking about the blog post?

20 A Absolutely.

21 Q Starting at Line 18, I read: Did you read this?

22 At Line 19, you answer what?

23 A 19, I say, Somebody brought it to me.

24 Q 20, I say, All right.

25 21, you say, I'm sorry, yeah.

1 22, I say, All right. And it says, You're a terrible
2 person. It says, Edmonds is a terrible person and a bunch
3 of other stuff. Did this bug you?

4 Your answer.

5 A I say I was concerned with it, but it did not bother
6 me.

7 Q Would you read your actual answer?

8 A It says, I was concerned about it. But that was my
9 short answer to you. But it did not bother me.

10 Q When Edmonds asked you for any position, you would
11 agree with me --

12 A Can I say something on that last one?

13 Q Yes, sir.

14 A The question was about Mr. Edmonds. When you asked me
15 the question, you mentioned his name and I say that I was
16 concerned about it. But it didn't bother me. I was
17 concerned on his behalf.

18 Q You didn't think the question was about your article?

19 A No. You mentioned in your question to me -- you
20 mentioned Edmonds' name is your question to me in that
21 article.

22 Q Chief, when Edmonds asked you about a bunch of open
23 positions -- or strike that. When Chief Edmonds says,
24 Chief, I'll work any position, more or less. You can make
25 me a round driver, firefighter. You would agree with me

1 y'all had plenty of positions open, correct?

2 A I stated earlier in this testimony that yes, we had
3 openings.

4 Q And your answer earlier was that you didn't want to
5 freeze people out, the people who were competing for those
6 jobs, correct?

7 A I did not want to place him -- I also said I did not
8 want to place him in one of those positions, one of those
9 lower positions.

10 Q The reason you gave me in your deposition was that you
11 thought that if you put him in one of those lower positions,
12 we'd end up right here anyway. You can back check me --

13 A I did say that, but that don't change the way I felt.
14 You know, in depositions, you get short answers.

15 Q And after your meeting with Edmonds on July 5th of
16 2017, you drafted up a termination letter for him?

17 A I did not present Mr. Edmonds with a termination
18 letter. I did draft up something for my own -- for me, I
19 did, but I did not present Mr. Edmonds with a termination
20 letter.

21 Q And just to get clarification, your testimony today is
22 the reason y'all had to let Edmonds go is because he was not
23 meeting expectations, correct?

24 A And I thought he was very ineffective in what he was
25 doing.

1 Q Your testimony in October was that Mr. Edmonds was
2 meeting expectations, correct?

3 A Yes, during the time -- the beginning, yes.

4 MR. PORTER: Thank you, sir.

5 THE COURT: Ms. Williams.

6 MS. WILLIAMS: Yes, Your Honor.

7 REDIRECT EXAMINATION

8 BY MS. WILLIAMS:

9 Q Chief, do you still have your deposition?

10 A I do.

11 Q Will you turn to Page 6 of your October deposition?

12 And I believe Mr. Porter had you read Lines 14 and 15. But
13 let's start at Line 3, if you would, and I'll read the
14 question.

15 A Okay.

16 Q So let's kind of jump into how you came to know Mr.
17 Edmonds. When did you first meet Michael? You can
18 estimate. I think he came on the fire department in '87?

19 And what was your answer?

20 A Yes, sir.

21 Q Question: Would you have met him when he came on the
22 fire department in '87?

23 And what's your answer?

24 A I think I met him then.

25 Q Question: Okay. Have you had occasion over the years,

1 I would assume, to observe his work product?

2 What was your answer?

3 A Yes.

4 Q Question: Is he good at his job?

5 Answer?

6 A I thought he was.

7 Q Question --

8 A I'm sorry, I thought he was good.

9 Q Question: Okay. Did he meet the expectations of his
10 job?

11 Answer?

12 A Yes.

13 Q Okay. In that context, what time period did you
14 believe Mr. Porter was asking you about Mr. Edmonds' job
15 performance?

16 A I was thinking he was talking about like in the
17 beginning and up until we started having these issues.

18 Q Around '87, correct?

19 A Right.

20 Q Okay.

21 A Well, even after that. Because when he was a battalion
22 chief, I thought he did a great job.

23 MS. WILLIAMS: Your Honor, may I approach the witness?

24 THE COURT: Yes, you may.

25 BY MS. WILLIAMS:

1 Q I am going to take one of these gloves and you take the
2 other. And Mr. Porter had you read one of the labels in the
3 glove. But there's more than one label in that glove,
4 correct?

5 A There are two labels in this glove.

6 Q Two labels in the glove, okay. And you testified that
7 there was some concerns about the labeling in the glove,
8 correct?

9 A Yes.

10 Q Which label concerned you? Can you read that label?

11 A The second label. And before I read this, I think
12 that, you know, when people label stuff, what I'm learning,
13 they may put the good on the front, but they going to put
14 the bad in the back. And the bad was in the back. And I
15 would be glad to read it to you. It is capital letters and
16 it is colored red and it's got an exclamation point on both
17 sides of it. It says: Danger, this protective glove will
18 not protect you from all hazards encountered during
19 emergency operations. And it says especially firefighting.

20 Q Now, you testified that there were two labels in the
21 glove, correct?

22 A That's correct.

23 Q But the labels are back and front, right?

24 A They are.

25 Q Are there any other words that appear in red on any of

1 those labels?

2 A Now, the word danger is the only thing that appears in
3 red, but everything else is captured in black, capital
4 letters.

5 Q And on the label that says danger, is that the one that
6 you just read that was of most concern?

7 A That's the one that brought me the most concern.

8 Q Let's go back to the investigation summary. Do you
9 still have a copy of that?

10 A I do not.

11 Q So that's Plaintiff's Exhibit 12. And if you look at
12 the first page of the summary, the title of it is
13 Investigative Report, Conclusion and Summary, okay?

14 A Okay.

15 Q Now, towards the bottom, you will see the section that
16 says allegations?

17 A Now, are we talking about -- you said the summary and
18 towards the bottom.

19 Q Yes, do you see the section that says allegations
20 underlined?

21 MS. WILLIAMS: May I approach?

22 THE COURT: Yes, you may.

23 BY MS. WILLIAMS:

24 Q I'm sorry, it's actually, I guess, Page 1. Okay, so
25 Page 1, allegations?

1 A I see that.

2 Q So will you read the allegations that were part of this
3 investigation?

4 A It says allegation number one: The following violation
5 could be considered if the allegations were found to be
6 sustained. Violation of the City of Columbia ethics policy,
7 also, SOG 100.24.1.B and SOG 100.18.5.A.A abuse of position.

8 Q Okay. And continue.

9 A It says: Referenced in City of Columbia employee
10 handbook, appendix C and Columbia Fire Department standard
11 operating guidelines refers to the allegation of receiving
12 some sort of personal gain when moving forward with the
13 purchase of the Super glove.

14 Q Are there any other allegations in this?

15 A There's only that one allegation.

16 Q And that allegation you just read was receiving some
17 sort of personal gain when purchasing the gloves, correct?

18 A That's correct.

19 Q And Mr. Edmonds was cleared of that allegation,
20 correct?

21 A He was.

22 Q How does that --

23 A Well, when I say he was, I didn't sustain or unfound
24 it, but as far as I'm concerned, I'm good with it.

25 Q In terms of his receiving personal gain from the

1 purchase of the gloves?

2 A Right, yes. I don't believe that he would do that.

3 Q So the subject of the investigation was about whether
4 or not he received personal gain, correct?

5 A That's correct.

6 Q It wasn't about whether or not he made a mistake in the
7 glove that he purchased?

8 A It was not.

9 Q Also, if you would refer to your deposition again, Page
10 40.

11 A Okay.

12 Q Are you there? Okay. I'm sorry, 41.

13 A Okay.

14 Q Mr. Porter had you read Lines 20 through 25, when he
15 asked did it bug you about the blog. Can you read Line 25?
16 What was your answer?

17 A I was concerned about it.

18 Q Can you turn to the next page? Question on Line 1:
19 Did you do anything in response to it?

20 And your answer?

21 A I said, No, not a thing.

22 Q Why didn't you do anything in response to it?

23 A Because you can be concerned, but you don't let your
24 concern bother you. I'm concerned about my department going
25 out there doing a job, but I can't sit around and be

1 bothered that they don't. We just have to deal with it if
2 they don't do it. I'm always concerned about my department.
3 I'm concerned when I leave my wife at 1, 2, 3 or 4 o'clock
4 in the morning when I have to go to fire calls, very
5 concerned, but I don't let that bother me.

6 MS. WILLIAMS: I have no further questions.

7 THE COURT: Any recross?

8 MR. PORTER: Extremely brief, Your Honor.

9 RECROSS-EXAMINATION

10 BY MR. PORTER:

11 Q Chief, I just want to be clear. Your testimony is that
12 this investigation into the purchase of \$60,000 worth of
13 gloves did not mention that they were not safe for
14 firefighting simply because that was not germane as to
15 whether or not he was an ethical purchase?

16 A It did not include what you just said, yes, I agree.

17 Q And the NFPA we see on the glove, those are the
18 standard for firefighting equipment, correct?

19 A Those are minimum standards.

20 MR. PORTER: Thank you, sir.

21 THE COURT: Thank you, Chief. You can step down.

22 THE WITNESS: Thank you, Your Honor.

23 (Witness steps down.)

24 THE COURT: Ms. Williams or Ms. Thye, call your next
25 witness.

1 the evidence. However, you have not been given -- you have
2 not heard the closing arguments and have not been given the
3 applicable law. So do not discuss the case among yourselves
4 or with anyone else during your lunch. Do not use your
5 electronic devices to investigate or look up any issues that
6 may be involved in this case. So with that, I'm going to
7 allow you to be excused, again, be back ready to go at 1:30.

8 Everyone remain seated while this panel is excused.

9 (WHEREUPON, the jury exits the courtroom at 12:01 p.m.)

10 THE COURT: Anything further at this point from the
11 Plaintiff?

12 MR. PORTER: No, Your Honor.

13 THE COURT: Anything further from the Defense?

14 MS. THYE: Not in terms of evidence, Your Honor. We
15 have motions.

16 THE COURT: Let me hear your motions.

17 MS. THYE: Thank you, Your Honor.

18 Again, we are renewing our motions for a directed
19 verdict in the remaining charges that are before the Court.
20 The first one, taking them in similar order, is the
21 promissory estoppel claim. As Your Honor is aware, we
22 discussed yesterday, in order for the Plaintiff to prevail
23 on a promissory estoppel claim that the Court will have to
24 ultimately decide now that the evidence is in and before you
25 is whether there was an unambiguous promise made by the

1 city. And in terms of what that promise pertains to, in the
2 Plaintiff's complaint, the promise was keeping the
3 confidentiality of the survey, of the statements given to
4 Ms. Stewart in the survey. That unambiguous promise, while
5 the city would agree that Ms. Wilson did tell folks that it
6 would be candid, the summary of what was told was certainly
7 intended to be shared.

8 So the concerns that were raised, both in the terms of
9 what some of the communication and trust issues in the fire
10 department were certainly meant to be shared. So while the
11 promise of confidentiality as to who said what, there was no
12 confidentiality in terms of what the substance was to have
13 been said.

14 But understanding if the Court is inclined to say that
15 they were promised that confidentiality wouldn't be
16 breached, whether or not the Plaintiff reasonably relied on
17 that promise. And again, as gone through yesterday, he had
18 -- as far back as a year before, he had started making the
19 same comments to folks, the same concerns that he had that
20 he shared with Ms. Stewart and then shared with folks after
21 that. So therefore, there was no reasonable reliance on any
22 promise of confidentiality when he, himself, was telling it.

23 And furthermore, his injury wasn't as a result of that
24 promise. The final element of a promissory estoppel claim
25 is that the Plaintiff was injured in reliance on that

1 promise. He wasn't injured in reliance on the promise
2 because I don't think it's genuine to say that I relied on
3 the promise, yet I have told many people prior to that and I
4 told many people after that. He can hardly say that he was
5 surprised by the attribution of those comments to himself
6 when he himself had been the one saying them.

7 In the Craft case, the court is clear that if the
8 injury would have happened independently from the promise,
9 then promissory estoppel doesn't provide a remedy in this
10 case. And that's exactly what we have here.

11 THE COURT: Thank you.

12 Any response, Mr. Porter?

13 MR. PORTER: Yes, Your Honor.

14 First, we have testimony about the list that the City
15 of Columbia used. That's actually heavily discussed, and I
16 believe it's Exhibit 6 or 7, in that range, where Mr.
17 Edmonds sends the March 25th e-mail to Teresa Wilson because
18 Chief Adams was able to discern his name. We have now
19 confirmed testimony that Chief Jenkins was in the room.
20 Chief Jenkins confirmed he was able to deduce what the
21 anonymous report by command staff members were saying.
22 Reverend Baker also echoed to that. So I do think we have
23 an unambiguous problem with confidentiality, looking at
24 Exhibit 1, a breach of that promise.

25 Next comes the causation, was the next thing that Ms.

1 Thye referenced. I think the clearest evidence of causation
2 is Reverend Baker's testimony that right after the survey,
3 Chief Jenkins attempts to remove Mr. Edmonds.

4 Moving on to the last few things, reasonable reliance,
5 you know, the city manager testified that reliance was
6 reasonable as did the senior assistant city manager and
7 Michael Edmonds testified that he relied on it. I
8 appreciate what the Defense is trying to do saying that this
9 guy has complained before, but the chain of command is a big
10 deal at a fire department and going outside of it was
11 different.

12 Last, the most important case with the decision of this
13 claim is Bishop v. City of Columbia involving the fire
14 department at the City of Columbia on the enforceability of
15 a promise of retirement rights. Ultimately, I think the
16 City prevailed on that issue on the facts. Here, I think
17 the facts show we have a pretty certain unambiguous promise.
18 And I think I've given you enough evidence for the breach.
19 Thank you.

20 THE COURT: Thank you.

21 MS. THYE: Briefly, Your Honor. The best interest that
22 his injury didn't occur is there was more than a year that
23 went past that. So if there was any confidence breached
24 back in March of 2016, he wasn't asked for his resignation
25 until July of 2017. During that time, Mr. Baker's testimony

1 was that he wanted to see certain improvements. Having not
2 seen those improvements in 2017, that was the culmination of
3 the effect. It wasn't as a result of any breach of any
4 confidentiality, it was the fact that things weren't getting
5 done and he still wasn't being effective in his job.

6 THE COURT: All right. Thank you.

7 The promissory estoppel -- your motion is for a
8 directed verdict on a promissory estoppel. I think we're
9 off -- I'm trying to figure out the semantics. If I deny
10 the directed verdict, the Court still has to make the
11 finding on whether the Plaintiff has proven by -- and I
12 haven't been able to fully -- is the standard a
13 preponderance of the evidence on an equitable cause of
14 action or is it by clear and convincing?

15 MR. PORTER: I believe preponderance, but I would need
16 to research that.

17 THE COURT: Here's what I'm going to do, and I'm not
18 sure how to handle this procedurally. I find that --

19 MS. THYE: It is preponderance of the evidence.

20 THE COURT: Now, whether it's needed to be treated as a
21 directed verdict motion, which, certainly, generally does
22 not require a preponderance of the evidence standard, I
23 think probably procedurally what I'll do is I'm going to
24 deny the motion for directed verdict. However, I find that
25 the Plaintiff has failed to prove by a preponderance of the

1 evidence the necessary elements of promissory estoppel.
2 Therefore, the Court finds for the Defendant on the
3 promissory estoppel cause of action.

4 That takes care of the promissory estoppel. Let's talk
5 about the other two issues.

6 MS. THYE: Let's move to the negligence case.

7 I think somehow as the trial has progressed, we have
8 shifted a little bit. In the Plaintiff's complaint, the
9 negligence is set out as a complaint about our failure to
10 supervise -- the Defendant owed Plaintiff the duty to
11 conduct a confidential investigation when it hired Ms.
12 Stewart to investigate the fire department. The duty was
13 based on the ordinary duty to supervise employees and
14 agents.

15 It appears that throughout the trial, Plaintiff has
16 tried to sort of cast this characterization a little
17 different in terms of we were negligent in somehow our
18 response to findings of that survey. I don't believe that's
19 before the Court. I believe the four corners of the
20 pleading would have us analyze this under just an ordinary
21 duty to supervise Ms. Stewart and her conducting a
22 confidential investigation.

23 Under that purview and under that analysis, what the
24 Plaintiff then must show for a duty to supervise is that,
25 first of all, a duty exist. Is there a duty for us to

1 supervise? Well, the ordinary duty of care owing to once we
2 -- once we learned that there was a possible breach of
3 confidentiality, did we take the appropriate steps under
4 those circumstances? There was testimony from Ms. Wilson
5 that this was the only notice that was received relevant to
6 whether or not confidentiality had been breached. That Mr.
7 Edmonds was the only who brought that to anyone's attention.
8 And that she had not heard of that before and that no one
9 else had done that.

10 So the question of negligent supervision comes into
11 play when the employee acts outside of the course and scope
12 of their employment, that is under normal circumstances, the
13 city is liable under respondeat superior for all of its
14 employees, for acts committed, torts committed in the course
15 and scope of their employment. When they act outside of the
16 course and scope of their employment, such as intent to
17 harm, something like that, then we look at a negligent
18 supervision, cast liability on the employer under those
19 circumstances. But to do so, they have to know or have
20 reason to know that they should exercise that supervision.

21 Ms. Wilson clearly knew that that was part of the
22 survey. She wanted that to be part of the survey. She
23 expected it to be part of the survey, made it clear. Ms.
24 Stewart testified today, so there are facts in evidence,
25 where she said that was absolutely an essential key to it

1 and she had maintained that confidentiality throughout.

2 So there is no notice at this point to be imputed to
3 the City of Columbia that we knew or should have known of
4 the necessity to exercise additional supervision beyond that
5 which was already exercised in making sure that -- Ms.
6 Wilson put the e-mail out saying I want everybody to
7 participate and I want everybody to feel comfortable about
8 that. I think we have met our duty under those
9 circumstances and there was no reason to know that anything
10 else was required.

11 Going one step beyond that, as referenced yesterday,
12 assuming that there are a duty found and we get further than
13 that, there are some immunities provided by the tort claims.
14 One of the immunities is the exclusivity of the worker's
15 compensation provision. We argued that briefly yesterday.
16 But I sort of tried to wrap my head around how to explain
17 this in a way, because I clearly wasn't successful at it
18 yesterday.

19 But where the Plaintiff seeks to hold his employer, the
20 employee seeks to hold the employer liable for causes of
21 action related to personal injury damages, the law is clear,
22 both under the acts, the worker's compensation act, found at
23 42-1-10, I believe, and the tort claims act, which then
24 reaffirms the exclusivity of the worker's compensation act,
25 it is clear that for personal injury damages, you must

1 proceed under the worker's compensation act. It doesn't
2 mean that you're entitled to relief under that. You still
3 have to jump through all the hoops. But the cases say
4 clearly that the right of remedy is granted by the worker's
5 compensation act to an employee when he and his employer
6 have accepted the provisions to pay and accept compensation
7 on account of personal injury or even death by accident
8 shall exclude all other rights and remedies to such
9 employee. Recovery under the act is the exclusive means of
10 settling personal injury claims which come under the act.
11 And that's take from the Logus vs. Mack Truck case, which
12 Mr. Porter cited yesterday. However, they were clear to say
13 only the actions arising from personal injury are impacted.
14 So they said slander, for instance, they took slander
15 outside of that.

16 So defamation since those damages are related to
17 reputational damages, they're not a personal injury, they're
18 a proprietary sort of injury. So they're going to be
19 separate. So we would concede that for purposes of
20 defamation, that is outside of the worker's comp. He does
21 not have a remedy under the worker's compensation act for
22 that, but negligence, he would.

23 And another reason that that is so is that if we were
24 to allow employees to sue their employer under negligence
25 for personal injury damages, it would all but aggregate

1 completely the at-will employment doctrine. And that is
2 something that the courts have very clearly reaffirmed and
3 kept in place here in South Carolina, is that employers,
4 with the exception of the public policy discharge, which
5 seems we've already taken care of and argued here, have the
6 unfettered right to terminate employment for good reason,
7 bad reason, no reason at all. To allow the employee then a
8 back door to be able to sue the employer in negligence, in
9 straight negligence would seem to aggregate that and that
10 could not be what the court intended. So I think it's
11 important that we read this worker's compensation
12 exclusivity in as immunity.

13 It says that even if we were negligent, even if the
14 City was negligent, the tort claims act says we're going to
15 recognize an immunity for that if you can bring your cause
16 of action under the worker's compensation act. Clearly,
17 mental injuries alone are compensable under the worker's
18 compensation act. There are hoops you have to jump through,
19 but they are compensable. So that would be what I think he
20 is arguing when he's talking about pain and suffering,
21 mental anguish, humiliation, things of that type that are
22 clearly personal injury damages.

23 So to the extent -- I guess it's my position that he
24 hasn't met all the elements of a negligence action. But
25 even if we get that far, I think at the very least, we have

1 to look at whether or not he's entitled to receive damages
2 on those parts. When it's talking about personal injury
3 damages, that would be part of the tort claims act immunity.

4 THE COURT: Thank you.

5 And let me remind y'all, I may have my head down. I'm
6 reading the same time y'all are talking. I don't mean to
7 show any disrespect to you as attorneys. Sometimes, as a
8 lawyer, when a judge had their head down, it used to sort of
9 bother me, but I realize now sometimes you have to have your
10 head down reading. I assure you I'm listening to you as
11 you're speaking.

12 Go ahead, Mr. Porter.

13 MR. PORTER: First, the South Carolina Code 42-1-160
14 does away with our worker's comp argument. The statute is
15 clear, the act defines physical injury, stress or mental
16 illness accompanied by a physical injury or stress or mental
17 illness unaccompanied by a physical injury, but accompanied
18 by extraordinary and ordinary workplace conditions not
19 related to normal employer/employee relations, there's the
20 ellipses here, such as disciplinary actions, a few more
21 ellipses, or terminations.

22 This is not a personal injury under the act with
23 respect to any of the damages at issue. If it were, you
24 know, kind of alternatively, the pecuniary, the wage loss
25 and the reputational loss would get in under Logus v. Mack

1 Trucks.

2 Again, giving them the benefit of the alternative,
3 there's no physical personal injury here that would be
4 compensable under the act. So you've also got some
5 persuasive federal law to rely on that I cited yesterday and
6 discussed in greater detail at Pages 12 through 15 of my
7 pretrial brief.

8 Now, turning back to the elements. First and foremost,
9 negligent supervision. The elements stated in Doe V. ATC,
10 which should be cited at Page 6 of the pretrial brief,
11 generally turn on two fundamental elements, knowledge of the
12 employer, foreseeability of harm to third parties.

13 We've got knowledge of the third party with the e-mail
14 from Mr. Edmonds to Ms. Wilson. We've got foreseeability of
15 harm. Why would we mention confidentiality and anonymity if
16 there was not a concern about retribution? That's a
17 reasonable inference. Yet, at the same time, we have Chief
18 Jenkins in the room when the survey results are presented,
19 including the results from his command staff. And then we
20 have as the survey is wrapping up, Allison Baker, handing
21 this confidential information to Chief Jenkins. There is
22 also a voluntary undertaking way we can get there on the
23 duty end, which is discussed at Page 15 and 16 of the
24 pretrial brief.

25 I think I've covered what Ms. Thye talked about, but if

1 there are any questions, I'll be happy to answer.

2 THE COURT: Thank you.

3 MS. THYE: Very briefly. The section 160 that he
4 refers about the disciplinary termination. Remember, he
5 didn't allege to be negligently terminated. He alleged to
6 be negligently supervised or employed. So I think that's an
7 argument that he would have to take up with the worker's
8 compensation commission in order to determine whether or not
9 that was a defense under the act. Because his allegation in
10 his complaint stems to our ordinary duty to supervise. He
11 didn't make a negligent discharge. He made a negligent
12 supervision of employee. So I think that takes it out of
13 the section he's citing and I think the commission would
14 still have the exclusive jurisdiction.

15 THE COURT: I deny the motion for directed verdict. I
16 find there is sufficient evidence, questions of fact to send
17 the issues to the jury on the matter of negligence.

18 I'll be glad to hear you, Ms Thye.

19 MS. THYE: Thank you, Your Honor. The final one is
20 defamation. Your Honor, this is an interesting claim
21 because it is also one that has to be read in parts because
22 it's not just the defamatory statement that he is alleging
23 from the blog because there is no way to attribute that
24 statement in the blog to the City. As the Court is well
25 aware, it has to be a false and defamatory statement made by

1 the city about the Plaintiff.

2 Even if we assume for purposes of this motion that that
3 statement was defamatory on its face, that it alleged an
4 unethical violation, we contend, first of all, that it was
5 not false. It was substantially true. Mr. Porter mentioned
6 that the report came out a few days before the article, but
7 I think for purposes of the article and the timing of
8 everything, what was in that article was substantially true.
9 There was an investigation into the purchase of the gloves,
10 whether it was ethical or not. And we heard clarifying
11 testimony that the report was exactly about that, the
12 ethics. It wasn't about whether the gloves actually were an
13 appropriate purchase, it was about the ethics of it. So the
14 report and the statement in the blog, it was accurate.
15 There was an investigation into that.

16 The blog also said that there was a chief with
17 purchasing authority. Well, we've heard testimony today and
18 yesterday, there are more than one chief with purchasing
19 authority. Even Mr. Edmonds admitted there were people up
20 the chain that were more responsible than he was for the
21 purchasing. So it could have been several people. There
22 was nothing that linked that statement to the Plaintiff,
23 nothing other than the words sources that linked the City of
24 Columbia to the information that was given to the blogger.
25 So we have that statement.

1 But what Mr. Porter says in recognizing, and I think
2 wisely, that that statement probably isn't going to get it
3 and tries to attach it to the act of the termination. And
4 the act of the termination, quite frankly, in and of itself,
5 I don't believe could be defamatory on its face. That would
6 virtually mean that any time you terminated somebody, we
7 would be doing a defamatory act.. That can't possibly be.

8 So we have two pieces that individually can't be
9 defamatory and now we're trying to bootstrap them together
10 to say that because the termination followed so closely in
11 time that therefore two nondefamatory acts and statements
12 should make one defamatory action as a whole.

13 The problem with that is, again, there's no indication
14 that -- first of all, he was asked for his resignation.
15 Chief Jenkins indicated today that he did ask him for his
16 resignation. That was a true statement. He intended that
17 they separate employment and that they go their separate
18 ways. He was no longer effective. There was nothing false
19 about that statement. It may not have been what Mr. Edmonds
20 wanted to hear or what he thought was appropriate, but,
21 again, there's nothing false or defamatory about that act.

22 If we were to follow what the Plaintiff, I guess,
23 intends a logical conclusion, if anytime somebody was under
24 investigation and they were cleared of an unethical
25 violation, we would then have to have affirmative

1 obligation, I guess, to publicize the clearing of them. He
2 said, What did you do after you found out that he was
3 cleared of his report? You know, how did we clear his name,
4 so to speak? I think there's an obligation to that. I
5 think there was the investigation, there was the evaluation,
6 there was a determination by the chief that he was no longer
7 effective in his job and he was asked for his resignation,
8 like I'm sure a lot of folks are everyday around the state.
9 That in and of itself is not a defamatory act. It has to be
10 read with this other piece. Unfortunately, this other piece
11 also doesn't meet the definition of defamation.

12 So two of these pieces together, we're trying to sort
13 of bootstrap the insinuation of well, because this happened
14 so close in time to this, that's not the same. So we can't
15 attribute it to the City. We can't attribute it to the
16 Plaintiff, at least, as to the blog.

17 And in terms of the act itself, you know, an act in and
18 of itself of terminating somebody and taking their equipment
19 and sending them on their way, there was no indication in
20 the record that this was done in any way that was intended
21 to maximize the humiliation to the Plaintiff. At some
22 point, the City has to recover its equipment, has to recover
23 its vehicle. At some point, it has to make a decision.
24 Forms are signed and separation of employment occurs.

25 In terms of that, if the argument -- I thought I

1 understood maybe yesterday that we were trying to also
2 include the report, the IA report to talk about rumors in
3 that report. I would submit to the Court, and this is
4 certainly something of question of law for you to decide, as
5 whether that report is privileged. Whether a qualified
6 privilege, as we've pled in our answers, imports to that
7 report in and of itself. It is an internal document --

8 THE COURT: Now, which report?

9 MS. THYE: It is the IA glove report.

10 MR. PORTER: It's 12.

11 MS. THYE: Exhibit 12.

12 THE COURT: Was 12 introduced into evidence? I know it
13 was marked as an exhibit, was it ever introduced?

14 MS. THYE: It was.

15 THE COURT: Go ahead.

16 MS. THYE: The purpose of that report was to determine
17 whether an ethical violation had occurred. It was an
18 internal document. I think, quite frankly, that is
19 quintessentially a privileged internal document. So
20 anything relayed in there that was told to the author of
21 that report would have a privileged attached to it, much
22 like any incident report. Any time a police officer creates
23 an incident report and writes in that report what somebody
24 told him, that is just reciting facts. Those reports are
25 privileged. Qualified privilege is a matter for the Court

1 to decide.

2 And I think under these circumstances, in good faith,
3 there was an interest to be upheld and that interest of the
4 City was to determine no ethical improprieties. The
5 statement was limited in scope and purpose. He didn't go on
6 and on about it. He just said this is what I was haring,
7 but he couldn't confirm and so indicated that. It was a
8 proper occasion and the publication was in a proper manner
9 and to proper parties. So whether or not they would now try
10 to say that that report itself adds another level of
11 defamatory conduct, that statement is privileged, Your
12 Honor.

13 So for those reasons, we think there is not sufficient
14 evidence in the record for the jury to hear it or return a
15 verdict on the defamation charge.

16 THE COURT: Thank you.

17 Mr. Porter, I'll be glad to hear from you.

18 MR. PORTER: Yes, Your Honor. Very briefly, I'll start
19 with the privilege since that's the newer argument. First
20 and foremost, what the city is saying we're arguing is not
21 what we're arguing. That document is evidence that the
22 context was ripe in the fire department that Mr. Edmonds was
23 engaged in an unethical relationship with Seth Newton.
24 We're not alleging that is the defamation, we're alleging
25 that's evidence of defamation. Just like what Robert Joyner

1 said about people talking about this, just like what Chief
2 Edmonds about the phone calls he got after the article.

3 In large part, that article shows us an addition to
4 their testimony corroborating documentary evidence, but to
5 say this is somehow the subject of our defamation claim is a
6 bit of a mischaracterization.

7 THE COURT: Well, if the article is not the subject of
8 the defamation claim, what is?

9 MR. PORTER: I was talking about Exhibit 12, Your
10 Honor.

11 THE COURT: Oh, I misunderstood you. I thought you
12 just said the article was not the subject of defamation.

13 MR. PORTER: I may have said the article, but we were
14 talking about the privilege --

15 THE COURT: I understand that. I heard article. But
16 what you mean is that the investigative report, Plaintiff's
17 Exhibit 12 is not the subject of the defamation?

18 MR. PORTER: It corroborates the defamation, but it is
19 not the defamation.

20 THE COURT: All right. I got you.

21 MR. PORTER: And that was the only thing addressed with
22 privilege.

23 Moving backwards, the court has recognized these sort
24 of defamation claims. This is a Tyler V. Mack Stores claim.
25 The slippery slope, these sort of issues, they can be taken

1 up with the Supreme Court if they want reconsider Tyler V.
2 Mack Stores. But this is on all fours close to Tyler V.
3 Mack. And in Tyler V. Mack, they said when you fired a
4 gentleman who stole and then you also fired the gentleman
5 who legally, under the polygraph -- refused to take the
6 poly, there's an actionable claim of defamation by act. And
7 that's been the law of South Carolina for 30 years.

8 And here, we have good competent evidence through a
9 combination of the article, through what that report,
10 Exhibit 12, corroborates, then the testimony of the
11 witnesses that there was an insinuation, an atmosphere that
12 Michael Edmonds had engaged in an unethical relationship
13 with Newton's Fire Service and that he was responsible for
14 the flaws of the facilities. Then he is made to resign and
15 perpetuates the idea that he was made to resign as a result,
16 when, in fact, we have shown good evidence that that was a
17 pretext for the jury to consider.

18 THE COURT: Thank you.

19 Anything in response?

20 MS. THYE: No, Your Honor.

21 THE COURT: I appreciate both of your very articulate,
22 well-reasoned arguments, however, I'm going to deny the
23 motion for directed verdict. There is sufficient evidence
24 that creates questions of fact on the defamation cause of
25 action that would require the Court to send that issue or

1 that cause of action also to the jury. So I'm going to deny
2 the motion for directed verdict.

3 Any other motions?

4 MS. THYE: None from the city.

5 THE COURT: The only thing that I need to deal with is
6 the charges and we've talked about those a little bit.
7 Y'all had outlined -- when we had the discussion earlier up
8 here at the bench, as far as any major issues with the
9 charges, are the charges something that's going to require
10 more than 10 minutes of our conversation in chambers? I
11 mean, obviously, I'll let you be heard on your position on
12 charges, but -- my question is when we meet to discuss
13 charges -- you want to do that now or do you want to break
14 for lunch and then come back and talk about charges and then
15 hammer that out and then have the jury in? How do y'all
16 want to do that?

17 MR. PORTER: I'll yield to Ms. Thye.

18 MS. THYE: We can do that now.

19 THE COURT: Okay. Well, let's go back to chambers and
20 then we'll come right back in here.

21 (Short break.)

22 THE COURT: Plaintiff ready to proceed?

23 MR. PORTER: Yes, Your Honor.

24 THE COURT: Defense?

25 MS. THYE: Yes, Your Honor.

1 THE COURT: Ms. Thye, did you have some issues you
2 wanted to put on the record as far as charges?

3 MS. THYE: I do, Your Honor, very briefly. We had
4 requested charges -- and these are out of Anderson's civil
5 charge book. 1420 as to truth, which I believe you're going
6 to charge. 131 is the nominal damages, which I believe
7 you're going to charge. We would also request under the
8 tort claims act 15-78-60, there's the exclusivity in the
9 worker's compensation act. I think you've covered that, but
10 just to make sure I have that in the record.

11 THE COURT: And I'll state that we talked about that
12 particular charge and I'm denying that request for that
13 charge.

14 MS. THYE: And then, also, 1416 and 1417 having to do
15 with qualified privilege, just to put those on the record as
16 well. And I understand your ruling on those as well.

17 THE COURT: Let's make sure the record is clear. I'm
18 also denying the request for those charges as well.

19 MS. THYE: Thank you. We also requested charges
20 pertaining constructive discharge, which I understand you
21 concur with and that will not be read. There were some
22 damages charges pertaining to pain and suffering, loss of
23 enjoyment, respective damages, future damages, earning
24 capacity with the life expectancy table added. I think
25 maybe the life expectancy table one is not going to be read,

1 but the others, you denied my motion, but just to preserve
2 that. We requested a principle agent charge to come out of
3 there. I believe you denied that as well.

4 In light of the charges, we just want to preserve for
5 the record that we would request a verdict form that breaks
6 the elements of defamation and the negligent damages down a
7 little greater. We understand your position on that, but
8 just for purposes of the record, we want to make sure that
9 we've got that in there. This is a defamation case with
10 several components. We think the jury would be better
11 served with either special interrogatories or a verdict form
12 that breaks that down and the negligent damages as it
13 relates to the personal injury damages as well. But we
14 understand your ruling on that, we just want to make sure
15 that that's all preserved.

16 THE COURT: Thank you.

17 I have shown the verdict form to both the Defense and
18 the Plaintiff. And I noted the objections from the
19 Defendant. There were no objections from the Plaintiff in
20 regards to the verdict form. And the verdict form that will
21 certainly be part of the record here is one that the Court
22 -- I denied any motions about any changes and this is the
23 verdict form that we will use.

24 Anything else?

25 MS. THYE: No, Your Honor.

1 THE COURT: Mr. Porter?

2 MR. PORTER: Just the constructive discharge request,
3 the Plaintiff notes on record his request for the
4 constructive discharge, but understands your ruling. Thank
5 you.

6 THE COURT: All right. Let's bring the jury in.

7 (WHEREUPON, the jury enters the courtroom at 1:50 p.m.)

8 THE BAILIFF: The jury is present, Your Honor.

9 THE COURT: Thank you.

10 Ladies and gentlemen, thank you for your promptness.
11 We have been taking up some matters outside of your
12 presence. We're now ready to proceed. At this point, we're
13 at the stage of the trial where the attorneys will be
14 allowed to give their closing arguments.

15 Mr. Porter.

16 MR. PORTER: Thank you, Your Honor, may it please the
17 Court.

18 Madam Forewoman, men and women of the jury, Michael
19 Edmonds was a doer. Not only did he speak up when he saw
20 something wrong, the documents you will take back with you
21 into the jury room will show you that he offered solutions,
22 that he put his neck out there willing to take
23 responsibility. Michael is a man who put what was best for
24 the fire department and best for the citizens it served
25 above personnel politics. He was brutally honest. He spoke

1 up when he should have and that's the reason he is here and
2 no longer in one of those flashy uniforms.

3 It is fitting that at the beginning of this trial, the
4 city referred to this case as if it were a marriage gone
5 bad. If this was a divorce case and if I were a divorce
6 lawyer, this would be one of the clearest cases of
7 abandonment that I have ever seen. Here, Michael gave 30
8 years of love, loyal service and respect to the fire service
9 and what he got in return was cold, unfair and without the
10 courtesy of a simple warning. And now, he lives in a
11 garage.

12 Thirty years. Michael was hired as a entry level
13 firefighter on July 13th, 1987. I was born on July 13th the
14 very next year. So for me, Michael truly did give a
15 lifetime to this department. He worked during that lifetime
16 to build a reputation as a serious, hardworking firefighter
17 only to have it shattered for no good reason. Benjamin
18 Franklin had a quote that a reputation is like a glass vase,
19 easily broken, but nearly impossible to put back together
20 again.

21 But a reputation was not the only thing that was
22 irreparably hurt here. I told you at the beginning that
23 Michael's identity was shattered on July 5th, 2017, when he
24 was told there was no more room for him at the department he
25 had called home for three decades. Think about it. Most

1 Americans spend the majority of our waking lives at work.
2 When we're out at a social function and we meet somebody
3 new, the first or the second thing that is asked of us or
4 that we say is what we do. We say I'm a teacher, I'm a
5 carpenter, I'm a nurse, I'm a welder. We are proud of what
6 we do and it becomes who we are. Then out of the blue,
7 after 30 years, you lose who you are.

8 The Defendant time said it was time to split up, time
9 for a divorce, that the Plaintiff's work was lacking. In
10 that regard, to quote Dave Thomas, Where is the beef? Where
11 is the documentation of Michael Edmonds' flaws? I encourage
12 you to look for it in your jury room.

13 We've never said that Michael was perfect, but we've
14 heard a lot about people who had serious issues at the fire
15 department while, by all accounts, Mr. Edmonds was still
16 doing a pretty good job and his heart was still in the right
17 place. Michael is not the sort of person who would have
18 brought things this far if this were on the level. So what
19 gives?

20 In employment law, when a given excuse for an action
21 does not add up, we call that a pretext, a false reason.
22 And the question becomes for the jury what's the real
23 reason. Allison Baker, in an e-mail that you'll read, said
24 there was evidence to substantiate terminating Michael.
25 Where is it?

1 Ultimately, it's your job to answer that question as
2 well as these questions: Why did the fire chief try to fire
3 Michael right after the consultant study and right after he
4 shared the confidential e-mail with Reverend Baker? Why did
5 the fire chief cite the gloves and facilities issues for
6 Michael's discharge when there was a report, at Exhibit 12,
7 clearing him of wrongdoing on the gloves and when the chief
8 knew that Michael was not able to fix the facilities on his
9 own and had no knowledge that he wasn't doing everything
10 that he could to get those facilities fixed? Why was the
11 fire chief still able to operate with so much discretion and
12 so little oversight and there were so many problems?

13 Answering why is your job. You will do that by
14 applying the facts to the law as the judge charges within
15 what we call the standard of review.

16 Let's start with the standard of review because it's
17 the limbs of which you must look at all the evidence.
18 Earlier, I gave you a football analogy postulating that the
19 Plaintiff merely needs to cross the 50-yard line by a chain
20 link. Now, I want you to imagine in your mind's eye the
21 scales of Lady Justice. They started this case balanced
22 with both parties bearing equal weight. The Plaintiff does
23 not have to prove this case beyond a reasonable doubt,
24 tipping the scales almost entirely in its favor nor by a
25 clear and convincing standard. Rather, this is a civil

1 dispute and the law presumes a level playing field such that
2 the Plaintiff merely need to bend the scales in his favor by
3 a paperweight to prevail under preponderance of the review
4 standard. If you apply the facts to the law in the
5 framework of this standard, you find for Michael on any or
6 all of his claims, you will render a verdict in his favor
7 and award money damages.

8 For a legal technical reason, your job is a little
9 easier now. You will only need to consider the facts and
10 application of the law of defamation and the law of
11 negligence. Let's start with defamation.

12 First, understand, as I said before, that our Judge in
13 this civil trial is in charge of the law. So if what I say
14 is different from what he says, what he says goes.

15 There are two types of defamation, libel and slander.
16 Typically, libel is written and slander is spoken. This
17 case involves libel. Now, at first, when you hear the Judge
18 tell you about libel, you might ask yourself what writing
19 are we supposed to be looking at? If you keep listening, I
20 think you will hear what is known as defamation by act and
21 defamation by insinuation is also recognized as libel in
22 South Carolina without regard to the existence of a writing.

23 We allege and I believe we have proven that when the
24 Defendant forced Michael to resign on grounds they knew
25 weren't true, publically escorted him, a 30-year-old

1 employee, out of his work space and the way the negative
2 press in what Exhibit 12 will corroborate for you was a
3 rumor mill accusing him of being unethical that that
4 together amounts to defamation by action or insinuation.

5 Defamation has four principle elements. First, we, the
6 Plaintiff, must show you by a preponderance of the evidence
7 a false and defamatory statement about Michael. Remember,
8 again, defamation by action and insinuation. We feel here
9 that the termination of Michael in the wake of everything
10 that was going on created an actionable insinuation that
11 Michael was unethical and that Michael was responsible for
12 wrongdoing with respect to the gloves and the facilities.
13 Otherwise, why would he be made to leave over it?

14 When considering a false statement, whether or not it
15 impacts somebody's professional fitness is a very important
16 factor you will learn. Here, recognizing defamation by act,
17 I believe the insinuation we have discussed satisfies your
18 first element.

19 Next, publication to a third party. Here, you heard
20 from Mr. Robert Joyner, who told you everybody was talking
21 about Michael's exit and surmising that he was terminated
22 for the gloves or for the facilities. You heard from
23 Michael who told you that the minute the article came out,
24 he got 12 calls asking him about his camping relationship
25 with Seth Newton.

1 Now, note on the article, I would expect my opponent's
2 to say why aren't you suing the author, Ron Aiken? Very
3 simple, the author Ron Aiken did not force Michael's
4 separation on knowingly false grounds. The Defendant did.
5 The Defendant had completed a report clearing Michael and
6 said the glove issue was the last straw.

7 Last, regarding publication, use your common sense.
8 When you look at Exhibit 12, and it talks about this rumor
9 mill and about the ethics, about all this, do you not think
10 the city kicked the hornets' nest when they did this the way
11 they did it. Third, follow the publisher. Remember again,
12 Ron Aiken did not do this to Michael, the city did.

13 And last, actionability of the statement with respect
14 of special harm or the existence of special harm. That
15 sounds very legalistic, but it is pretty straightforward.
16 The most important factor with respect to special harm is
17 that it be something couched to degrade a person. Meaning,
18 if you think this insinuation was couched to degrade a
19 person, then it is considered libelous per se and that
20 element is satisfied. If you don't think it was couched to
21 degrade on its own, all it needs to show is that the
22 communication intended to harm the reputation of the other
23 or lower his esteem in his community. Ask yourself if
24 suggesting that somebody is unethical or bad at their job
25 inclined to lower their esteem in their community?

1 Next, we move on to negligence. Negligence is a bit
2 more straightforward. We allege that the city was negligent
3 in supervising the fire chief and handling Michael's
4 confidentiality. Negligence requires duty, breach,
5 causation and damage. Y'all don't have to worry about duty
6 because that's a matter of law. So we jump into the next
7 three elements.

8 The breach, that the Defendant was negligent or
9 careless and/or reckless in a willful or wanton manner.
10 Here, we allege that the city voluntarily undertook this
11 so-called confidential survey only to undermine from the
12 get-to by having the chief in the room when the results were
13 read.

14 We allege as the survey was concluded and as everybody
15 told you that albeit with good intention, Reverend Baker
16 shared the confidential complaints Mr. Edmonds had made with
17 the fire chief and we cited the conversation between George
18 Adams and the Plaintiff.

19 This brings up an interesting facet of your jury
20 service. There's a credibility contest here. Witness
21 testimony is competing. Your job as the jurors is to
22 determine witness credibility. By all accounts, Michael is
23 an honest man. I don't know Mr. Adams good enough to say
24 that he's dishonest, so I don't say that he is, but I will
25 say that his testimony was a bit fuzzy.

1 First, understand, he all but admitted what Michael
2 said, only he said that he said I'm sure you have a lot to
3 say. Next, consider the reflective response when I asked
4 two separate questions about confidentiality. Failing to
5 answer those questions, but quickly volunteering the survey
6 didn't tell me anything. Last, the use of I don't recall in
7 the most important answer in his testimony.

8 Next, regarding the surveyor, I want you to consider
9 that her testimony didn't really change the game. The
10 sign-in sheet -- and that may sound docile, but the sign-in
11 sheet was talked about quite frequently in Exhibit 6, an
12 e-mail chain on March 25th between Michael and the city
13 manager where he says that that's how Adams was able to
14 discern when Michael met with the surveyor. And the city,
15 not Ms. Stewart chose who was going to be in the room when
16 the results were read.

17 I do not quite comprehend how when we're doing
18 supposedly a confidential survey that involves the top brass
19 of the fire department as subjects, not necessarily
20 recipient, why do we make the subjects also a recipient and
21 then expect to maintain confidentiality?

22 Jumping to the next two elements, did that breach cause
23 the damages or was the plaintiff injured or damaged? You
24 will hear terms of proximate cause and cause in fact. They
25 are not complicated. Proximate cause means a natural

1 result. Cause in fact means the harm was foreseeable.

2 Consider here Reverend Baker's testimony about the fire
3 chief trying to remove Michael right after the survey, right
4 after their discussion. Also, consider here what City
5 Manager Wilson testified to about LOCO, last one in the
6 chief's office, and the report that she received. Her
7 receipt of Michael's e-mail about breach of confidentiality
8 and her knowledge about problems with the fire department in
9 general. Don't you think they should have been watching out
10 for something like this?

11 Damages. And we touched cause, but you'll have to find
12 damages as well. We'll talk about that more later, but that
13 simply means that Michael was harmed as a result of
14 proximate cause and cause in fact of the negligence we just
15 talked about.

16 I want to briefly before we go into damages comment on
17 the defense. Know that when I talk about the defenses at
18 this stage, it's a bit of guesswork. So I will not catch
19 everything that they bring up before you. I have to kind of
20 predict what they will say, but I may be able to reply
21 briefly after their closing statement.

22 First, they may suggest, even though it's not relevant
23 or not relevant necessarily at all to the negligence and
24 defamation claim that Michael's separation was voluntary. I
25 think his testimony that it was resign or be terminated.

1 The termination letter, one of the exhibits will show you,
2 was already ready, the way he was escorted out and the mood
3 and the tenure of the termination meeting tell us what was
4 going on here.

5 Next, they may claim that he was complaining before, so
6 what's the difference now? Easy, the fire chief tried to
7 fire him right after the survey. Even though Michael did
8 what was right, participating in the survey and talking to
9 Reverend Baker when asked, chain of command is a big deal at
10 places like a fire department. Crossing the thin red line
11 that you see before you should not in this situation, but
12 did have consequences.

13 Next, let's talk about what the law calls damages. And
14 bear with me, I know my handwriting is awful. But the
15 damages are pretty straightforward. I told you at the
16 beginning that Michael lost \$108,096.75 in back wages. I
17 got there by dividing his annual salary, \$87,219, by 12 to
18 arrive at a monthly rate of \$7,268.25. Once I did that, I
19 arrived at \$138,096.75 is what I called total back pay. But
20 then, in fairness to the Defense and in full transparency to
21 y'all, I subtracted his interim earnings.

22 Now, in the beginning, my prediction of his interim
23 earnings, my estimation was a total of 30,000. Michael
24 actually testified he was making 25,000 a year. I reduced
25 our interim earnings -- our claim for damages to be

1 consistent with Michael's testimony and to be fair to all
2 involved. Subtracting 25,000 per year -- or here, I did 25K
3 divided by 12 where I got a monthly rate, multiplied that by
4 19 months and subtracted that from our total back pay
5 figure, you arrive at \$98,513.42.

6 Next, we have the somewhat easier damages. Michael
7 estimated that the replacement of his work truck and his
8 cell phone and his work clothes costs about 12 grand. We
9 get you have to give that stuff back, but as a result of
10 losing your work truck, you obviously need a work truck --
11 or a new mode of transportation, so we think that's a
12 reasonable and straightforward damage.

13 Moving on from that are some less tangible, but in my
14 mind, more real damages. What I mean by that is how do you
15 quantify the value of a person's good name? How do you put
16 a price tag on their reputation? How do you put a price tag
17 on their pain and suffering? Regarding the first, that is
18 something you all will have to work out together to
19 reasonably figure out how much a good name is worth, but I
20 would ask you again to consider that Ben Franklin quote that
21 I believe illuminates the issue. A reputation is like a
22 glass vase, it's very easy to break and when you do, it's
23 nearly impossible to put it back together again.

24 Pain and suffering can be worked out in a number of
25 ways. I've given you a suggestion on here, but it is up to

1 you to determine how to do pain and suffering.

2 One suggestion is that you might assign a daily rate
3 for pain and suffering you feel like was suffered. You
4 could use -- and here, I've used integrals of 10 because
5 that's easy. You could 10, 100, 1,000, whatever, more,
6 less. This is up to the jury. You would then multiply that
7 by the length of time you think he has and will suffer pain
8 and suffering as a result of what happened. If you think
9 very simplistic here, I used three years. A hundred dollars
10 times 365 per day times three arriving at a total of --
11 well, you would multiple thirty-six five by three, just move
12 it over two and you'll get your total there. Again, this is
13 something up to you. You can use this method, you can not
14 use this method. You can go higher, you can go lower, you
15 can go longer, you can go shorter. This is why we have a
16 jury.

17 To help you in this process, you will be given what's
18 called a verdict form. And on it, you will be asked to
19 answer some very simple questions. I'm going to show you an
20 example of one. This is not necessarily what yours will
21 look like, but I think it will be pretty similar. You will
22 be asked, did the Defendant, the City of Columbia, defame
23 the Plaintiff, Michael Edmonds? Yes or no. If you say yes,
24 how much damages did he suffer? You may next be asked, was
25 the Defendant, City of Columbia, negligent with respect to

1 the Plaintiff, Michael Edmonds' separation of employment?
2 Yes or no. If yes, did that negligence cause Michael
3 Edmonds harm? If yes to both questions, how much harm? How
4 much money can you compensate that with?

5 And that, as I said in the beginning, what the law
6 empowers you to do to try to fix pain, to try to fix a wrong
7 with money damages. The law does not allow you to award
8 extraordinary relief, like a reinstatement. And you
9 certainly can't take us back in time to undo it.

10 Now, we've covered a lot of legal technicalities in a
11 little bit of time and I'm not the best teacher, so I
12 apologize if I rambled, but I want to step back and talk
13 about what's gone on here. A hardworking, honest man was
14 removed from his field of 30 years out of nowhere on July
15 5th. He was shocked. He was escorted out publically, made
16 to walk on the side of the road waiting for his wife to pick
17 him up so that he could tell her that the full-time career
18 that he had since they met back in 1992 was over.

19 I will tell you, jurors, that this is the first time I
20 have tried a case where all my witnesses, including my
21 client has said that the person who did this is a good man.
22 I respect Chief Aubrey Jenkins. I mean that. I did not
23 enjoy what I had to do today, but that does not mean that
24 the city gets a free pass for his behavior.

25 Here in these last three days, Michael Edmonds was

1 finally able to get the entire command staff in the same
2 room. Considering that, as they display solidarity and
3 attempt to show a united front, let me say this, I hope and
4 pray for each and every one of these folks who are involved
5 in a very noble endeavor that when their time is done that
6 they are able to leave with dignity. Michael was not and
7 that is why we are here.

8 Your task is important. The Seventh Amendment of the
9 Constitution guarantees the civil jury trial. We do this
10 because, though it's not the perfect way to handle disputes,
11 it's the best way modern minds have devised. You all, as I
12 told you at the beginning, are better suited to figure out
13 the facts than we are. By my count, you all bring 500 --
14 the 12 of you who will be in the jury room bring 511 years
15 in combined life experience to the table as you sort out
16 right from wrong here. That is phenomenal to think about.

17 I believe that Michael is in good hands and I again
18 thank you for your service. As you consider everything
19 you've heard, combining your life experience and your
20 understanding and just plain old common sense, I humbly ask
21 that you render a verdict that speaks the truth and that you
22 do justice by Michael. Thank you.

23 THE COURT: Thank you.

24 Ms. Williams or Ms. Thye.

25 MS. WILLIAMS: Good afternoon, ladies and gentlemen.

1 It's been a long three days. Well, I'm going to try to
2 summarize what you all have heard over the past three days.
3 I know it's been a lot of information. I know that
4 Plaintiff counsel just shared some information with you. I
5 may be sharing some of the same information, but just from a
6 different perspective. At the beginning of this case, as I
7 mentioned to you, leadership doesn't come with a title nor
8 does it come with longevity.

9 At the beginning of the case, we talked about duties
10 and responsibilities and we talked about leadership. And we
11 talked about the fact that it's important that everyone
12 fulfill their duties and how one person not fulfilling their
13 duties just has a domino effect on an organization. We also
14 talked about the employment relationship as a marriage. And
15 we talked about the fact that sometimes those marriages last
16 until one person passes away. Sometimes those marriages
17 last until one of the parties decides that it's time to end
18 the marriage.

19 Well, for the past three days, we heard a story about a
20 relationship that began about 30 years ago and that had to
21 come to an end. The leader of the Columbia Fire Department
22 had to make a decision to end a long-term relationship and
23 that's not an easy decision. The Plaintiff would like for
24 you to believe that a blog post or a survey had something to
25 do with the Plaintiff's resignation.

1 Now, the Judge is going to give you the official
2 charges on defamation. And Mr. Porter went over his version
3 of what he has to show, what the Plaintiff has to prove in
4 order for you to find defamation. But right now, I'm
5 speaking for the city. In the Plaintiff's words, they're
6 alleging that a blog, coupled with the resignation resulted
7 in defamation by insinuation. And again, it isn't the
8 official -- this isn't the official charge to you, the Judge
9 will give you that, but the Plaintiff must prove all of the
10 elements of defamation, not one or two, but all four
11 elements.

12 So let's look at the first one, false statement. The
13 statement in question was the blog post about a chief who
14 was under investigation for the purchase of \$60,000 worth of
15 gloves and unethical procurement practices. Well, you will
16 have the evidence when you go back to deliberate, but you
17 will see that that was a true statement. There was an
18 investigation of a chief. It never mentioned the Plaintiff
19 by name or position, but there was an investigation into the
20 procurement of \$60,000 worth of gloves and alleged unethical
21 procurement practices. That was the truth.

22 Next, the Plaintiff has to show that the City published
23 that information. They didn't show that. There's no
24 evidence to support that the City published that information
25 to the blogger. You heard our city manager, Teresa Wilson,

1 and she told you who's authorized to speak on behalf of the
2 city. And you heard Ms. Wilson say that no one is
3 authorized to speak on behalf of the city anonymously. So
4 there's no false statement here. There's no evidence of
5 anything false or malicious regarding the termination. You
6 heard from Assistant City Manager Baker and Chief Jenkins
7 the reasons that the Plaintiff was asked to resign.

8 Now, Mr. Porter also went over some of the elements of
9 negligence that you all are going to have to deliberate.
10 And one of the things he mentioned as a breach was that the
11 city shared the outcome of the report with Chief Jenkins.
12 Well, that was the whole purpose of the report so that the
13 fire department leadership can learn from Ms. Stewart some
14 suggestions, recommendations for changes. But the report,
15 again, never mentioned who said what. The report gave
16 recommendations and it's reasonable to believe that those
17 recommendations would be shared with the leaders who can
18 implement those changes.

19 You also heard from Ms. Stewart this morning and she
20 told you about the agreement between her and the city and
21 that they did agree to confidentiality and anonymity during
22 the survey process. She also testified that the
23 confidentiality was something that was very important to her
24 firm and that she has also lost some clients because they
25 didn't want to adhere to that. And she also testified that

1 the city is a long-term client of hers, that she had done
2 several of these surveys for the city and that
3 confidentiality was never an issue in any of the surveys.

4 You heard from Ms. Wilson as she explained the reason
5 for the survey and that was to assess whether or not there
6 was a need to restructure the fire department and to ensure
7 positive morale. You heard Ms. Wilson say that out of 108
8 people who responded to that survey, only one person
9 complained of a breach of confidence, and that was the
10 Plaintiff. And what did the Plaintiff say was the breach?
11 He stated that George Adams told him Ms. Stewart said the
12 guy before me had a whole lot to say.

13 Well, you also heard Ms. Stewart say she wasn't
14 responsible for the sign-in sheet. People didn't normally
15 come in according to how they were listed on the sign-in
16 sheet, that because of the different shifts, some people had
17 to change. So they weren't coming in necessarily in order
18 of the sign-in sheet. And then you heard Chief Adams say he
19 did not make that comment to the Plaintiff.

20 Now, there was a big deal made about a confidential
21 e-mail that was sent to Mr. Baker. And you heard Mr. Baker
22 say that he's the type of leader who listens and solves
23 problems. Why send someone an e-mail listing issues and
24 problems if you don't want them to take action and solve
25 those problems? And you heard Mr. Baker testify, he looked

1 at the e-mail, he solved the issues and he made an attempt
2 to resolve those issues.

3 Mr. Baker also stated that he had concerns about the
4 facilities and that those facilities fell under the
5 responsibility of the Plaintiff. And Mr. Baker said that
6 the Plaintiff had 12 months to get those facilities in order
7 and that within those 12 months, there was no improvement,
8 no positive changes.

9 Mr. Baker also testified -- or he clarified the fact
10 that Mr. Edmonds sent him that confidential e-mail about
11 some issues that needed to be addressed, but Mr. Baker said
12 he never received any e-mails from Mr. Edmonds saying that
13 he lacked any resources, that he needed any money, that he
14 needed anything in order to maintain the facilities and get
15 them up to par. So he could send an e-mail about being
16 denied time to take a class, but he couldn't send an e-mail
17 saying hey, I don't have the resources that I need. I'm not
18 a mechanic, I can't fix the fire trucks. He didn't reach
19 out to Mr. Baker when it came to the things that were under
20 his responsibility.

21 Now, out of the 400 members of the fire department, the
22 Plaintiff brought two witnesses today. You heard one of the
23 witnesses say well, he speaks his mind and it bothers a lot
24 of people and he's lacking on the social side. The other
25 witness, when I specifically asked him whether or not he

1 went to lunch with Chief Jenkins and told Chief Jenkins
2 Edmonds has to go. You heard his response. It wasn't no, I
3 didn't say that. What was his response? Well, there were a
4 lot of issues in the department. There were a lot of issues
5 that I told Chief Jenkins about. I asked him the question a
6 second time. He still did not say no. He did not deny that
7 he told Chief Jenkins that it was time for Edmonds to go.

8 You also heard testimony from Chief Jenkins. And he
9 explained to you so eloquently why he asked for the
10 Plaintiff's resignation. He stated that the blog didn't
11 bother him. Yes, he was present during Ms. Stewart's
12 discussions as to the survey results, but you heard him say
13 when he heard those results and he heard those
14 recommendations, he looked within himself. He looked at the
15 changes that he needed to make to be a better leader. That
16 was his focus. He said that the changes started with him.

17 He also said that that report had no bearing on his
18 decision to ask for Edmonds' resignation. He talked about
19 the conditions of the buildings, the fire trucks. And yes,
20 the gloves were the final straw, but you heard all of the
21 other issues and incidents and concerns outside of the
22 gloves and outside of the investigation. And the Chief told
23 you about the importance of having adequate equipment and
24 suitable living conditions for the firefighters. And these
25 were matters, these were responsibilities under Mr. Edmonds'

1 control. And not only are these things important for the
2 firefighters, for the fire department, but it's important
3 for you and I, for the public at large. It's important that
4 our fire department has adequate equipment, proper
5 maintenance on the trucks.

6 You heard Chief say that the Plaintiff came to him and
7 said, No one listens to me and I can't get things done. Mr.
8 Edmonds' position was a very important position on the
9 Chief's executive leadership staff. But again, as I
10 mentioned, leadership doesn't come with a title or
11 longevity. And as a leader in the Columbia Fire Department,
12 Chief Jenkins had to let his assistant chief of
13 administration, the man he hired into this position, go. He
14 had to ask for his resignation.

15 Now, there has been some talk about damages. Mr.
16 Edmonds in his testimony talked about loss of a cell phone,
17 car, but you heard in Chief Jenkins' testimony, that's city
18 property. No one gets to take their cell phone. No one
19 gets to take their city car with them when they resign. He
20 and his wife testified that the fire department was his
21 life, yet, he hasn't applied for any jobs in firefighting
22 since 2017. And keep in mind, ladies and gentlemen, his
23 resignation was his second retirement.

24 So when you talk about damages and the figures that Mr.
25 Porter put up, keep in mind, Mr. Edmonds is receiving a

1 retirement check. Keep in mind that Mr. Edmonds has a duty
2 to mitigate those damages and he has not looked for
3 employment since 2017.

4 And as far as receiving compensation for the vehicle
5 and the cell phone, that's like a teacher retiring and
6 asking the school district to pay for her to get a new smart
7 board. Those items did not belong to him. They were city
8 property and returned to the city after his resignation.

9 So back to our marriage analogy. Plaintiff counsel
10 said that if this were a divorce, he would consider it
11 abandonment and I agree with that. The Plaintiff abandoned
12 his duties as a member of the Chief's executive leadership
13 staff. You heard the Plaintiff testify that he said that he
14 could not support the Chief. You heard Chief Jenkins say
15 that he's responsible for the City of Columbia and Richland
16 County Fire Services. He can't do that alone. And a member
17 of his executive leadership team says that he cannot support
18 him and says that no one listens to me. Well, a leader
19 without followers is just a man taking a walk.

20 Chief Jenkins doesn't need a man taking a walk. He
21 doesn't need someone who sees something, then he says
22 something. He needs a leader. And he lost that leader, he
23 lost that leadership that he once had in the Plaintiff.
24 Chief Jenkins was abandoned and it was time for him to ask
25 for the Plaintiff's resignation and end the relationship.

1 Thank you.

2 THE COURT: Mr. Porter.

3 MR. PORTER: Yes, Your Honor, very briefly.

4 The City of Columbia is not a mom and pop outfit. Look
5 at the exhibits you take back there and see if there's any
6 more of this concept that Edmonds wasn't up to snuff than
7 argument, mere argument. Is there evidence of it? Look at
8 the documents. Look at the lack of disciplinary actions, at
9 the lack of negative performance documentation, at the lack
10 of e-mails saying hey, what's up with the facilities?

11 Are you telling me that an operation this large does
12 not communicate problems to one another? I know
13 communication was a problem in 2016, but if we're going to
14 keep everything the same, you would think we would have made
15 some changes. That's what I meant when I told you in the
16 beginning where's the beef. I'm not trying to trivialize
17 this, but, really, the city has to argue something here, but
18 all you've gotten this far, respectfully, is hollow.

19 To me, working with your hands is employment. Deciding
20 to be a carpenter is in employment. That is real work.
21 Just because you are not sitting in an office does not mean
22 you're not mitigating your damages. In fact, it's very
23 important work. Yes, he's not making as much as he used to.

24 You all use your common sense to figure out did a
25 person who is like Michael, who is Michael's age do what he

1 could when he fired off 21 applications to the fire service
2 and then decided, you know what, it's time to just get to
3 work.

4 At the end of the day, though, I want to put it in this
5 perspective, we're quibbling over -- we're not quibbling,
6 but we're quibbling over a company car. All we're saying
7 there is if you're using a company car, the consequential
8 loss of losing your job is you've got to replace your car.
9 It's not about things like a company car.

10 Ms. Edmonds was asked some question to the effect of
11 well, you get retirement money, don't you? Do you think
12 she'd rather have that retirement or her husband back?

13 First off, just from a technicality, the Judge will
14 charge you on the law, but when we talk about something like
15 retirement, that's called collateral income. He was already
16 receiving it. He would have still been receiving it had he
17 had his job, if he didn't have his job. It plays in no way
18 into the damages. We reduced the damages even further to be
19 accurate in accordance to what he testified to.

20 The testimony you did hear today with respect to a man
21 I do respect about supposed problems regarding Michael
22 Edmonds did not add up. First, we heard that the gloves
23 weren't to be used in firefighting. You'll read a standard
24 warning disclaimer like every other standard warning
25 disclaimer you've probably seen in you 511 years of combined

1 life experience. Yet, on the first page, you will read this
2 structural firefighting protective glove.

3 Next, Chief Jenkins said that Michael was not meeting
4 expectations. Well, how did you testify in October? Well,
5 I was asked was he meeting expectations and I said yes.
6 Now, you're saying oh, I was talking about 15 years ago.
7 The testimony read said, Over the years, did you have a
8 chance to observe his performance?

9 Yes.

10 Was he good at his job?

11 Yes.

12 Was he meeting expectations?

13 Yes.

14 Let's give them the benefit of the doubt there. Why
15 say we're firing you over the glove issue then? Why say
16 that's the last straw when the report cleared him? And I
17 don't think anybody can look at the warning on this glove
18 and say that these gloves aren't used for firefighting.
19 Because that's what he led with. That's what he said.
20 That's what he said, the biggest thing for me was these
21 gloves couldn't be used for firefighting. This structural
22 firefighting protective glove.

23 He said, literally, I was not concerned about the Ron
24 Aiken article. He said in October, I was concerned about
25 the Ron Aiken article. I do not think he is being

1 intentionally dishonest. I think he's trying to do what he
2 think is best for this department. But what I think is best
3 for this department is the antiseptic effects of
4 transparency.

5 You see there are leaders who will surround themselves
6 by dissenters and there are leaders who won't. And I think
7 Chief Jenkins in his heart of hearts wants to be the sort of
8 person who does not have to have yes men about him and I
9 hope these men do dissent when they feel the need to, but if
10 they don't, that's a problem. If you're a student of
11 history, you can see where presidential administrations when
12 they have removed the dissenters on their cabinet, bad
13 things have happened. I don't get into the anecdotes
14 because it's going to require me to get political. But
15 that's a fact, a good leader surrounds himself with
16 dissenters. Socrates postulated this idea of a gadfly. I
17 quoted the philosopher Dave Thomas, now let's move to
18 Socrates. A gadfly is the sort of thing that yeah, it's
19 annoying, but you needed it to buzz around and move the
20 horses aside and in the right direction. Michael Edmonds
21 separated not because there was anything wrong with him, but
22 because he spoke up.

23 They say why would he have sent this to Allison Baker
24 if he didn't expect him to do anything with it? Well,
25 Allison Baker asked him to send it. He was doing what he

1 was told. That's the kicker here. My client only went
2 outside the chain of command when he was told to by a
3 superior officer, Teresa Wilson and Allison Baker,
4 otherwise, he respected the chain of command. The only
5 times he deviated that we've talked about today are when he
6 was directed to by a higher ranking officer. That's why you
7 don't have this nonexistent e-mail about the facilities to
8 the assistant city manager who didn't even have facilities
9 in his division.

10 We've heard a lot of what I would respectfully call a
11 strong man argument. The defamation here isn't about just
12 the two lines in that article, it's about so much more.
13 It's about the article coming out, people calling about the
14 article. Exhibit 12 will verify it for you, that people
15 were saying he was unethical.

16 And then the question of what did the Defendant say,
17 making him leave in the way he did was all they had to say.
18 You'll hear about defamation by act and when you do, you
19 need to rely on what the Judge charges, but I submit to you
20 that it sounds like this: Defamation need not be
21 accomplished in a direct manner. The insinuation may be
22 defamatory. A mere insinuation is actionable as a positive
23 assertion if it's false and malicious. In addition to a
24 verbal insinuation, a Plaintiff in South Carolina can also
25 prove defamation by actions. That is defamatory

1 insinuations can be made by actions or words.

2 Thank you for your time. I do not think that Mr.
3 Edmonds asked for nor is he the cause for this. Thank you.

4 THE COURT: Ladies and gentlemen, it is now my duty to
5 charge you on the law that's applicable to this case. And
6 what that simply means is I'm going to read the law that
7 applies to the case. Listen very carefully. Sometimes when
8 somebody's reading, it's easy to dose off. However, this is
9 the law that I'm required to give you and that you will need
10 to consider in this case.

11 I remind you that during this trial, you and I have
12 certain duties to perform. As the trial judge, it is my
13 responsibility to preside over the trial of this case and I
14 also have the duty to rule on the admissibility of the
15 evidence offered during this trial. You are to consider
16 only the evidence before you. If there was any testimony
17 ordered stricken from the record during this trial, you must
18 disregard that testimony. You are to consider only the
19 testimony which has been presented from this witness stand,
20 any exhibits which have been made a part of the record in
21 this case and any stipulations of counsel.

22 I have the additional duty to charge you the law
23 applicable to this case. It is your duty as jurors to
24 accept and apply the law as I now state it to you. If you
25 think you have any idea as to what the law is or what the

1 law ought to be and it does not agree with what I tell you
2 the law is, you must forget that idea because you are sworn
3 to accept the law and apply the law exactly as I state it to
4 you.

5 In every case tried in this court before a jury, the
6 jury becomes the sole and exclusive judge of the facts. A
7 trial judge cannot comment on or make any statement about
8 the facts in the case. Since you are the sole judges of the
9 facts, do not think by anything I have said during the trial
10 that I have any opinion about the facts of the case. The
11 law does not allow me to have an opinion about the facts.

12 The burden of proof in this case is by a preponderance
13 of the evidence. A preponderance of the evidence simply
14 means the greater weight of the evidence. It is evidence
15 which as a whole shows that the fact sought to be proved is
16 more likely true than not. This can be illustrated by
17 imagining a set of scales. When the case begins, the scales
18 are even. After all the evidence has been presented, if the
19 scales remain even or if they tip even slightly in favor of
20 the Defendant, then the Plaintiff has failed to meet the
21 burden of proof and would not be entitled to recover in this
22 case.

23 If, on the other hand, the scales tip even slightly in
24 favor of the Plaintiff, the Plaintiff will have met the
25 burden of proof and you should return a verdict for the

1 Plaintiff. The preponderance of the evidence is not
2 determined by the number of witnesses. Instead, it must be
3 determined by the greater weight of all the evidence.

4 There are two types of evidence generally presented
5 during a trial, direct evidence and circumstantial evidence.
6 Direct evidence is the testimony of a person who claims to
7 have actual knowledge of a fact, such as an eyewitness. It
8 is evidence which immediately establishes the main fact to
9 be proved.

10 Circumstantial evidence is proof of a chain of facts
11 and circumstances indicating the existence of a fact. It is
12 evidence which immediately establishes collateral facts from
13 which the main fact may be inferred. Circumstantial
14 evidence is based on inference and not on personal knowledge
15 or observation. It is proof that does not actually
16 establish the fact in question, but that asserts or
17 describes something else from which you may either
18 reasonably infer the truth of the fact or, at least,
19 reasonably infer an increase in the probability that the
20 fact is true.

21 For circumstantial evidence to be sufficient to warrant
22 the finding of a fact, the circumstances must lead to that
23 fact with reasonable certainty. The facts and circumstances
24 should be considered in light of ordinary experience and
25 common sense. The existence of a fact cannot be based on

1 speculation, surmise or conjecture. The law makes
2 absolutely no distinction between the weight or value to be
3 given either direct or circumstantial evidence. Nor is a
4 greater degree of certainty required of circumstantial
5 evidence than of direct evidence.

6 Necessarily, you must determine the credibility of
7 witnesses who have testified in this case. Credibility
8 simply means believability. It becomes your duty as jurors
9 to evaluate the evidence and determine which evidence
10 convinces you it is true.

11 In determining the believability of witnesses who have
12 testified in this case, you may believe one witness over
13 several witnesses or several witnesses over one witness.
14 You may believe a part of the testimony of a witness and
15 reject the main part of the testimony of that same
16 witnesses. You may believe the testimony of a witness in
17 its entirety or reject the testimony of a witness in its
18 entirety. You may consider whether the witness has an
19 interest in the result of a trial, whether the witness is
20 prejudiced for either the Plaintiff or the Defendant, the
21 opportunity for the witness to have seen the matters and
22 things about which the witness may testify and the way the
23 witness acts on the witness stand.

24 The tort of defamation allows a plaintiff to recover
25 for injury to his or her reputation as a result of the

1 defendant's communication to others of a false message about
2 the plaintiff. The focus of defamation is not on the hurt
3 to the defamed party's feelings, but on the injury to his
4 reputation. Defamatory communications take two forms, libel
5 and slander. This case involves libel.

6 Libel is actual per se if it involves written or
7 printed words which tend to degrade a person, that is to
8 reduce his character or reputation, the estimation of his
9 friend or acquaintances or the public or to disgrace him or
10 to render him odious, contemptible or ridiculous. The
11 statement at issue here is in the form of libel.

12 To recover for defamation, the Plaintiff must establish
13 by a preponderance of the evidence that there was one, a
14 false and defamatory statement by the Defendant concerning
15 the Plaintiff; two, an unprivileged publication by the
16 Defendant to a third party; three, fault on the Defendant's
17 part in publishing the statement; and four, either
18 actionability of the statement, irrespective of special harm
19 or the existence of special harm to the Plaintiff caused by
20 the publication.

21 A communication is defamatory if it tends to harm the
22 reputation of another as to lower him in the estimation of
23 the community or to deter a third person from associating or
24 dealing with him. In determining the defamatory character
25 of language the meaning of which is clear or otherwise

1 determined, the social station of the party in the
2 community, the current standards of moral and social conduct
3 prevalent therein and the business, profession or calling of
4 the parties are important factors. An imputation may be
5 defamatory as applied for one person at a given time and
6 place although it would not be derogatory of another person
7 at a different time and in a different place.

8 To determine whether the words tend to diminish the
9 respectability of the Plaintiff and expose him to disgrace
10 and ill repute, the defamatory statement must be false. One
11 who publishes a defamatory statement of fact is not subject
12 to liability for defamation if the statement is true.

13 To create liability for defamation, there must be
14 publication of a matter that is both defamatory and false.
15 There can be no recovery in defamation for a statement of
16 fact that is true. Although the statement is made for no
17 good purpose, it's inspired by ill will toward the person
18 about whom it's published and is made solely for the purpose
19 of harming him, the truth of the matter published is an
20 absolute defense. A sufficient defense is made out where
21 the evidence establishes a statement is substantially true.

22 A defamatory communication is presumed to be false
23 under the common law. The Plaintiff does not have the
24 burden of proving falsity, however, the truth can be
25 asserted as an affirmative defense, the burden of which is

1 on the Defendant.

2 The second major element of defamation that a plaintiff
3 must prove is in an unprivileged publication by a defendant
4 to a third party. The publication of defamatory matters is
5 it's communication intentionally or by a negligent act to a
6 third party, someone other than the person defamed.
7 Defamation is an injury to reputation and in order to be
8 actionable, there must be a publication to a third party.
9 For there to be actionable defamation, the statement must
10 have been communicated to someone other than the plaintiff.
11 Making the statement to the plaintiff alone is not
12 sufficient and cannot be the basis for a libel action.

13 Defamation need not be accomplished in a direct manner.
14 An insinuation may be defamatory. A mere insinuation is as
15 actionable as a positive assertion if it is false and
16 malicious.

17 In addition to by verbal insinuation, a plaintiff in
18 South Carolina can also prove defamation by action. That is
19 a defamatory insinuation that can be made by actions or
20 words. Common law actual malice means the Defendant acted
21 with ill will toward the Plaintiff or acted recklessly or
22 wantonly, meaning with conscious indifference toward the
23 Plaintiff's rights. In other words, actual malice means the
24 Defendant was actuated by ill will in what he did with the
25 design to causelessly and wantonly injure the Plaintiff or

1 that the statements were published with such recklessness as
2 to show a conscious indifference toward the Plaintiff's
3 rights.

4 A principal may be held liable for defamatory
5 statements made by an agent acting within the scope of his
6 employment or within the scope of his apparent authority.
7 The very essence of an action for defamation is that the
8 Plaintiff has suffered damage as a result of the injurious
9 effect of the defamation upon his reputation. Actual proof
10 of damages is not required if the defamation is actionable
11 per se.

12 If a defamation is actionable per se, then the law
13 presumes the Defendant acted with common law actual malice
14 and that the Plaintiff suffered general damages. Words
15 actionable per se carry with them the presumption that
16 actual damage to reputation and character directly and
17 proximately resulted therefrom. It is not necessary to
18 allege or derive any actual or special damages.

19 If a defamation is not actionable per se, then in
20 common law, the Plaintiff must plead and prove common law
21 actual malice and special damages. Where a Plaintiff is
22 entitled to recover actual damage for the injury the
23 statements caused him, these damages include one, injury to
24 reputation and standing in the community; two,
25 embarrassment; three, personal humiliation; four, mental

1 anguish and suffering; five, wounded feelings caused by an
2 injury to reputation.

3 A plaintiff who proves he's entitled to special damages
4 may recover as special damages any expenses or loss of value
5 that can be attributed to the libelist statement. Special
6 damages consist of specific identifiable, economic or
7 material losses to the plaintiff as a result of the
8 defamation. Special damages are tangible losses or injury
9 to the plaintiff's property, business, occupation or
10 profession, which are capable of being assessed monetarily
11 and which result from injury to the plaintiff's reputation.
12 Special damages is the manifestation of injury reputation
13 which is computable in money or capable of being assessed at
14 a monetary value.

15 The Defendant claims that the words spoken or wrote
16 were the truth. Truth is an affirmative defense in the law.
17 The Defendant must prove this defense by the greater weight
18 or preponderance of the evidence. A sufficient defense is
19 made out where the evidence establishes the statements were
20 substantially true. It is not necessary to establish the
21 literal truth of the precise statements made.

22 Slight inaccuracies of expression are immaterial
23 provided the defamatory charge is true in substance. The
24 Defendant need not justify every word of the statement so
25 long as the statement's substance or gist is proved true.

1 The statements must be viewed in their entirety. Variances
2 and immaterial particulars may be disregarded. The test is
3 whether the statements as made would have a different effect
4 on the mind of the reader than the truth would have
5 produced.

6 You must determine from the evidence presented what the
7 truth was and compare that to statements which you find were
8 made by the Defendant considering the statements according
9 to the ordinary meaning of the language used. There can be
10 no recovery in defamation for a statement of fact that is
11 true although the statement is made for no good purpose and
12 is inspired by ill will toward the person about whom it was
13 published and is made solely for the purpose of harming
14 them.

15 If you find there was no substantial difference between
16 the statements and the truth, then the Defendant has
17 established the defense of truth. If you find the
18 statements differed in substantial respect from the truth,
19 then the defense of truth has not been made out. If you
20 find the Defendant has proved it's defense, then your
21 verdict must be for the Defendant. The truth of a statement
22 is a complete or absolute defense to an action for libel.

23 The Plaintiff claims that the Defendant was negligent
24 and should compensate the Plaintiff for the injuries that
25 the Plaintiff suffered as a result of the Defendant's

1 negligence. In order to prove that the Defendant was
2 negligent, the Plaintiff must prove by a preponderance or
3 greater weight of the evidence the following things: First,
4 the Plaintiff must prove by a preponderance or greater
5 weight of the evidence that the Defendant owed the Plaintiff
6 a duty of care. This is a question of law which I will
7 decide if there was a duty to take care of the employee in
8 employer/employee relationship.

9 If I find there was a duty of care, you must then
10 decide the remaining questions. The first of these is
11 whether the Plaintiff has proven by a preponderance or
12 greater weight of the evidence that the Defendant breached
13 the duty of care by a negligent act or omission. Negligence
14 means that a person has done something that a reasonable
15 person would not have done or has failed to do something
16 that a reasonable person would have done in the same
17 situation.

18 The Plaintiff must also prove by a preponderance or
19 greater weight of the evidence that he suffered damages as a
20 result of the Defendant's breach of duty. Finally, the
21 Plaintiff must prove by a preponderance or greater weight of
22 the evidence that the damages were proximately caused by the
23 Defendant's breach of duty. Proximate cause is something
24 that produces a natural chain of events, which in the end,
25 brings about an injury. It is the direct cause of the

1 injury.

2 To prove that the Defendant's negligence proximately
3 caused the Plaintiff's injury, the Plaintiff must first
4 prove causation in fact. This is proved by showing that the
5 injury would not have occurred but for the Defendant's
6 negligence. The Plaintiff must also prove legal cause.
7 Legal cause is proven by showing that the injury was
8 foreseeable. This means that the injury occurred as a
9 natural and probable consequence of the Defendant's
10 negligence. The Plaintiff must prove that some injury from
11 the Defendant's negligence was foreseeable, but does not
12 have to prove that the particular injury that occurred was
13 foreseeable. However, the Defendant cannot be held
14 responsible for things which could not be expected to
15 happen. Proximate cause does not mean the only cause. The
16 Defendant's act can be a proximate cause of the Plaintiff's
17 injury if it was, at least, one of the direct concurring
18 causes of the injury.

19 If you decide that the Plaintiff is entitled to a
20 verdict, your next step would be to decide how much money
21 the Defendant should be required to pay. Actual damages are
22 to compensate the Plaintiff for the Plaintiff's injuries or
23 loss and to put the Plaintiff as near as possible in the
24 same position that the Plaintiff was in before the incident
25 occurred. In other words, actual damages would be the

1 actual losses and expenses which the Plaintiff has suffered
2 because of the Defendant's negligence.

3 Pain and suffering compensates the Plaintiff for
4 physical discomfort and emotional response to the sensation
5 of pain caused by the injury itself. There's no definite
6 standard by which to compensate the Plaintiff for pain and
7 suffering. You have the authority to determine the amount,
8 if any, to be allowed for pain and suffering using calm and
9 reasonable judgment to ensure that the damages are just and
10 reasonable in light of the testimony and evidence presented
11 in the case.

12 Loss of enjoyment for life compensates the Plaintiff
13 for limitations on the Plaintiff's ability to participate in
14 and derive pleasure from normal activities of daily life. A
15 Plaintiff is never entitled to recover conjectural or
16 speculative damages, but if you find the Plaintiff is
17 entitled to a verdict of actual damages, your verdict should
18 include an amount to cover any past, present and future
19 damages, which were proximately caused by the Defendant.
20 Any future damages must be reasonably certain to occur in
21 the future as a result of the Defendant's acts. Actual
22 damages need not be proven to a mathematical certainty or be
23 based on evidence of the precise amount of damages the
24 Plaintiff suffered. Instead, the evidence must allow you to
25 determine what amount of damages is fair, just and

1 reasonable.

2 Any future damages must be reasonably calculated having
3 resulted from the alleged injury or damage sustained in this
4 case. Future damages must be reduced to their present cash
5 value. The loss or impairment of earning capacity resulting
6 from injuries to the Plaintiff is a proper element of
7 damages. In determining the amount of damages due to the
8 Plaintiff for loss or impairment of earning capacity, you
9 should consider the following: One, the loss of future
10 earning power. This requires you to consider all matters
11 that relate to the issue of any impairment. Two, the affect
12 which the impairment will have on the Plaintiff's capacity
13 to work. Three, the extent to which the impairment will
14 impair the Plaintiff's earning capacity. Four, the present
15 value of all losses due to Plaintiff's impaired earning
16 power, the physical pain and suffering if reasonably certain
17 will result in the future from injuries to the Plaintiff.
18 And five, the evidence of what the Plaintiff had previously
19 earned when employed in the past is a factor on which to
20 base any loss or impairment of earning capacity.

21 In awarding damages for loss of earning capacity, the
22 Plaintiff may recovery for the loss or decrease of earning
23 capacity during his entire expectancy of life. In
24 determining the loss of earning capacity which may result in
25 the future, the fact that the Plaintiff is making the same

1 or more earning since the injury is only one factor to be
2 considered. If you determine that the Plaintiff is entitled
3 to damages for impairment of earning capacity, then you must
4 decide the amount of damages.

5 The Defendant has denied the Plaintiff sustained any
6 real or substantial personal injuries as a result of the
7 acts. If you find the Defendant's negligence caused the
8 Plaintiff some damage, but the evidence does not convince
9 you the Plaintiff sustained any real or substantial damages
10 as a proximate result of the Defendant's negligence, you
11 could find nominal damages in favor of the Plaintiff. A
12 small sum, known as nominal damages, may be awarded when the
13 Plaintiff has proved no substantial loss of injury but when
14 the law recognizes a violation or evasion of a legal right
15 for the breach of duty or when the Plaintiff's evidence
16 shows the existence, but not the amount of an actual injury.

17 Nominal damages are a trivial or trifling sum awarded
18 to a plaintiff in an action where there is not substantial
19 loss or injury to be compensated, but still the law
20 recognizes a technical invasion of the plaintiff's rights or
21 a breach of the defendant's duty. Nominal damages are
22 awarded for the vindication of a right where no real loss or
23 injury can be proved. If no actual damages capable of
24 pecuniary estimation have been sustained, but legal right of
25 the Plaintiff has been thereby violated through the

1 Defendant's negligence, you can award only nominal damages,
2 such as one dollar, one cent or other inconsiderable amount
3 to vindicate Plaintiff's legal rights.

4 When the plaintiff is injured or damaged by the
5 wrongful act of another person, it is the duty of the
6 plaintiff to reasonably try to avoid and lessen the damages.
7 Those damages which may be avoided by the use of reasonable
8 efforts, care and prudence by the plaintiff cannot be the
9 proximate results of the defendant's wrongful. Therefore,
10 the plaintiff cannot recover for damages which reasonable
11 might have been avoided. The efforts required by the
12 plaintiff must be determined by the rules of common sense in
13 fair dealing and what a person of ordinary reason and
14 prudence would do under the same circumstances.

15 The plaintiff is not required to use unreasonable
16 efforts or great expense to avoid and lessen the damages.
17 The defendant has the burden of proving a failure to lessen
18 damages on the part of the plaintiff by the preponderance or
19 greater weight of the evidence.

20 Ladies and gentlemen, I'm going to go over the verdict
21 form with you in just a moment. When I go through this
22 form, the order in which I give them is not to have any
23 significance at all. It simply has to be placed on the
24 verdict form so that you can make a decision.

25 The verdict form states one, did the Defendant, City of

1 Columbia, defame the Plaintiff, Michael Edmonds? If the
2 answer is yes, then you would proceed to that as a result of
3 the defamation, Michael Edmonds sustained damages in the
4 following amount. You would determine the amount. If the
5 answer is no, then you would check no and then proceed to
6 question two.

7 Question two is, Was the Defendant, City of Columbia,
8 negligent with respect to Michael Edmonds' separation of
9 employment? If the answer is yes, then you would proceed to
10 question three, which says, Did the City of Columbia's
11 negligence cause Michael Edmonds' harm? If the answer is
12 yes, then you would go down to 3A, As a result of the harm
13 to Michael Edmonds, he sustained damages, if any, in the
14 following amount for the City's negligence. If the answer
15 back at number two, was the Defendant City of Columbia
16 negligent with respect to Michael Edmonds' separation of
17 employment, if the answer is no, you would check no and go
18 no further and sign your name. There again, on three, Did
19 the City of Columbia's negligence cause Michael Edmonds'
20 harm? If the answer is no, then you would check there and
21 then sign and date it.

22 Your verdict must be unanimous. All 12 jurors must
23 agree on the verdict. If at any time when you're
24 deliberating, if someone needs to take a break, go to the
25 restroom and there's less than 12 of you in the room, you

1 must cease deliberations. You can only be deliberating with
2 all 12 people are present. So if somebody has to leave for
3 a reason, go to the restroom, just cease deliberations until
4 all 12 are back. Again, your deliberations must be
5 unanimous. Your verdict cannot be based on sympathy,
6 passion, prejudice, emotion or any other consideration not
7 in evidence in the case.

8 Madam Forelady, when the jury agrees on the verdict, if
9 you would check the appropriate boxes, then sign your name
10 and date it. Knock on the door, tell the bailiff that you
11 have a verdict. Keep the verdict form in your hand. When
12 you come back here in the courtroom, I'll ask if you've
13 reached a verdict. If the answer is yes, then you would
14 hand the verdict form to the bailiff and he would hand that
15 up to the Court and then we would publish the verdict.

16 I'm going to allow you to go back to your jury room.
17 Don't begin deliberations. I need to discuss some matters
18 with the attorneys first. It shouldn't be long. But once
19 you go back to your jury room and we send the verdict form
20 and any evidence that's been introduced back to you, you
21 will then be able to begin deliberations. The bailiff will
22 bring those documents back to you. In the meantime, again,
23 don't discuss the case until all those documents and
24 evidence and the verdict form come back with you.

25 With that, I'm going to allow you to go to your jury

1 room.

2 I'm going to ask the alternate to just keep your seat.

3 Everyone remain seated.

4 (WHEREUPON, the jury exits the courtroom at 3:11 p.m.)

5 THE COURT: If you would just step right outside the
6 door. Don't go in the jury room, just wait right outside
7 the door.

8 (Alternate exits courtroom.)

9 THE COURT: Anything further as far as the jury charge
10 from the Plaintiff?

11 MR. PORTER: No, Your Honor.

12 THE COURT: Anything from the Defense?

13 MS. THYE: Subject only to the objections.

14 THE COURT: All right. Those objections are noted.

15 If y'all would come forward and let's make sure what is
16 the evidence in the case.

17 Let's bring the alternate back in.

18 (Alternate enters the courtroom.)

19 THE COURT: You are through with your service this
20 week. You know, we never know. In fact, we had to use one
21 of the alternates. And I tell you, it's very rare that we
22 don't use both alternates in cases. Thank you for being
23 here. You're free to talk to anybody about the case you
24 want to. Sometimes lawyers may like to call you and ask you
25 your views, that's often very helpful to them. You can talk

Plaintiff's Exhibit 1

Study Announcement

Edmonds, Michael

From: Wilson, Teresa B
Sent: Tuesday, March 22, 2016 9:15 AM
To: COC Fire Dept Employees
Cc: Baker, Allison; Benjamin, Pamela R
Subject: FW: Fire Department Assessment

Importance: High

Good morning,

As part of a process to create an honest and respectful workplace, an assessment of the Fire Department will be conducted in the next several weeks. I have discussed this process with Chief Jenkins. He is very supportive and will ensure the participation of all Fire employees.

Your input is vital. You will be invited to provide candid feedback during a short and confidential meeting and or survey with our consultant. This will provide you an opportunity to share any concerns and recommendations for improvements needed.

Once the meetings are completed, the results will be compiled and the responses will be reported anonymously. The information gathered will help us determine the best possible ways to support an improved workplace.

When you receive scheduling information, please respond promptly – your input is needed, valued, and will remain confidential. Thank you,



We Are Columbia

Teresa Wilson
City Manager

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Plaintiff's Exhibit 2
Email of March 14, 2015

Edmonds, Michael

From: Edmonds, Michael
Sent: Saturday, March 14, 2015 12:15 PM
To: Jenkins, Aubrey; Tinsley, Harry
Subject: Confidential message to Fire 1 and 2

Dear Sirs, I am writing this email to each of you after a very sleepless night that was dominated by wondering what to do, how to do it, and if doing it would be detrimental to me or anyone else involved. No matter how much I pray or try to "stop thinking about it", the fact still remains that there are problems that I am cognizant of and the methods I have employed to solve these problems are not working, therefore I must alter my strategy, even if doing nothing or the same thing is the easy way out.

Each of us have just completed a week of work where we all experienced success and some of us experienced conflict. Monday, during the Command Staff meeting, the Assistant Chief of Professional Services opined that there would not be a recruit school until August. This was a shock to me due to what was told spoken in the last Fire Advisory Committee (FAC) meeting. Then, we told those in attendance that we would start a recruit school in March or April. In preparation for this week's FAC meeting, we learned that we are currently 35 positions short and we have receive 3 more resignation letters this week that are not included in this total. In accident investigations, there are three basic dynamics that discovered factors can be categorized in: contributing factors, resulting occurrences, and root cause. In dissecting our department's staffing problems over the recent history, one will find we have spent ~125% of our annual overtime budget so far this year; this is a resulting occurrence. We have a problem keeping employees; this is a contributing factor. But the root cause of the "staffing problem" is our failure to maintain full staffing or at least 98%. I will not debate anyone in this department ever again on what side of the staffing equation is to blame for this cause. Whether the City needs to assist with adjusting the compensation package or we need to inject more candidates at a faster rate, what we have been doing is not working. To date, we have decreased the time it takes to get promoted, we have decreased the recruit school length, and we have streamlined the route from Firefighter to Senior Firefighter. During the last budget meeting with City executives, I felt there was support for a strategy that adjusts the compensation package; but that is out of our control. Each of these components is only addressing one side of the equation. But what about the "entry" portion of the staffing equation?

Over 5 weeks ago, we discussed the "Tanker Driver" plan, but it wasn't until yesterday we got a two page written plan and the recruit school in August was still the position of the Professional Services division. Five weeks to develop a two page plan for you to contemplate?! Furthermore, waiting until August will be a 32 week time lapse since the last recruit school graduated. The time lapse between recruit schools and slow pace addressing employee entrance has become the norm. This strategy is detrimental to each of us, the Department, and is negatively impacting many external stake holders. Why is this being done? This question has been discussed, but identifying the reasoning is not really vital to solving this problem, identifying the problem is, and that is what I am attempting to do. I have tried many times to apply peer pressure, friendly assistance, and even force to adjust the apparent method of operation of the Professional Services division, all to no avail. This is why I am writing each of you. I am fully aware that this dynamic is no shock to either of you. We all see it, but I feel it is my duty to assert myself in this manner to assist with the solution.

Chief Jenkins, I can say that I have witnessed that this strategy has been vehemently addressed by Chief Tinsley, but those occurrences too were unsuccessful. Again, asking why is not beneficial to the solution. The fact is that the Professional Services leadership has become entrenched with maintaining the same strategy for injecting employees into the department.

Sir, In January of 2010, I stood beside you and Chief Anderson (Retired) when he announced his departure. I am cognizant enough to know that he was not doing so at will. At that time, we had been short staffed for many years prior, overtime was out of control, and the method for injecting employees was much the same as it is now. I have worked with you closely for over half my life. I must tell you that your past year is becoming alarmingly similar to the last year of Chief Anderson's tenure. I do not believe that your career is in jeopardy, but I do believe your legacy may be tainted if the status quo is allowed to transpire.

In July, I will have dedicated 28 years of my life to this department. I was born in this town, my children have grown up here, and I will surely die within 5 mile of where I sit right now. I eat, sleep, and breathe this department. I hope to continue to work for this department for many years to come or until asked to leave. I say the latter because my once internal feeling of job security is waning due to the aforementioned failure to maintain full staffing. This insecurity is something that I have never experienced before and I can't sit still and let it happen. The previous assertions are all facts. These dynamics are clear and present and the detriment is real for all of us. But there is one other dynamic that is opinion, but I still feel that is must be articulated.

Some time ago, I came to you Chief Jenkins about what I felt was the Professional Services leadership's viewpoint on the need for diversity in the department. I have spoken to Chief Tinsley about this as well many times. Well the time has come to state my position on the matter once again, because there may be a commonality in my perceived opposition of the need and the stagnation in other matters that affect the previous staffing problem.

Having a Professional Services division that is solely charged with hiring, promoting, and managing disciplinary actions, and feeling as I do, I must state my opposition to the current practices by the division. Gentlemen, I am only trying to protect each you, the department, the City, all while trying to do what is right. Each of you may have discussed this above my level; therefore I apologize for "butting in where I may not belong". But aside from asserting my opinion, these are the facts: the entire Professional Services division is white. I believe the entire cadre of adjunct instructors during recruit school were white. Without doing covert research, I would surmise that the vast majority of the candidates that have "washed out" over the past 5 years have not been white. These wash outs may all have been warranted, but the pattern should give us all pause. The rate of disciplinary actions generated by the Training bureau during recruit school is probably 3 or 4 times that of what is generated by graduated employees. These too may be valid, but is it productive and consistent with all other practices in the department? During the last promotional process, all members that participated in the Battalion Chief's process were white. When asked about this, the Professional Services Chief maintained an "oh well" approach. I assert that there may be other dynamics at play such as maybe the qualified non-white members have become disenfranchised about the process itself. That opinion was not reciprocated. What to do about this...I don't know, but ethically, I must fulfill my duty by affording what I know to each of you and offering my assistance to fix it.

In closing, I deeply apologize for taking this route to state my position, but as I noted, I have tried all other means I know of with no success. I cannot continue to do the same thing and expect something different to happen. I will work tirelessly to do anything each of you wishes to solve this problem. I offer every resource I know of to help us all succeed and conquer these problems. But I want each of you to know that they are problems, they are apparent to many others, and they will affect our futures if allowed to continue.

Lastly, please forgive me for any discomfort this has caused each of you.

Professionally, Mike

Plaintiff's Exhibit 3
Email of July 13, 2015

Edmonds, Michael

From: Edmonds, Michael
Sent: Monday, July 13, 2015 5:06 PM
To: Tinsley, Harry; Jenkins, Aubrey
Cc: Helms, James; Owusu, Albert
Subject: Restricted duty case

Importance: High

Dear sirs, in reviewing the specifics surrounding Captain Bostic coming to work as a recruiter due to not being cleared for firefighting duties, I cannot find a request sent to me nor an approval by me for him to perform in this capacity. As provided f by Health and Safety Chief Owusu, below is the timeline applicable to his case. As each will see, he has surpassed the policy allocated 180 days on restricted duty. Again, I have not been privy to his situation due to private meetings and seemingly approvals with and by others than myself. Therefore, I do not know if he has requested and/or been approved for an extension, which is also allowed by city policy.

Moving forward, I recommend that Captain Bostic be communicated with to express the options available to him; permissive leave, extension by Manager, or other. If an extension is a route pursued, I encourage that the considering party be aware that he has served in his current capacity for 302 days.

Additionally, I feel it is time to re-evaluate the practice of allowing members with off duty illness or injury to work restricted duty. If discontinuing this practice is not chosen, at least discontinue all extensions; on or off the job. If a member has not rehabilitated enough in 6 months, their ability to ever serve in full capacity is not probable. This opinion is further supported by our direct historical experience.

Professionally,



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From: Owusu, Albert
Sent: Monday, July 13, 2015 4:21 PM
To: Edmonds, Michael
Subject: Captain Bostic RD summary

Chief Edmonds,
Below is a summary of Captain Bostic's restricted duty status.

Started RD- 9/15/2014

Started as temp CFD recruiter- 9/15/2014

Extension for RD formerly requested March 3, 2015

Plaintiff's Exhibit 4
Email of
September 10, 2015

Edmonds, Michael

From: Edmonds, Michael
Sent: Thursday, September 10, 2015 1:31 PM
To: Jenkins, Aubrey; Tinsley, Harry
Subject: RE: Please reconsider use of personal time

As a professional courtesy and with the approval of Chief Wright, I felt it honorable for me to Cc him due to the details pertaining to him contained in the email as well as the potential impact to him. As for Chief Helms; I felt it beneficial for the Professional Services division to be included in a request to pursue an endeavor of professional development.

My apologies for questioning you while copying subordinates.



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From: Jenkins, Aubrey
Sent: Thursday, September 10, 2015 1:08 PM
To: Edmonds, Michael; Tinsley, Harry
Cc: Wright, Mark; Helms, James
Subject: RE: Please reconsider use of personal time

Why am I being questioned in an email with my subordinates being copied? I am quite aware of how we operate. I believe it would have been best served to discuss this with me!



We Are Columbia

Aubrey D. Jenkins, Fire Chief
Fire Department

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Confidential and Privileged:

Unless otherwise indicated or obvious from the nature of the communication, the information contained herein may be privileged and confidential information/work product. The communication is intended for the use of the individual or entity named above. If the reader of this transmittal is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited.

If you have received this communication in error or are not sure whether it is privileged, please immediately notify me by return email and destroy any copies, electronic, paper or otherwise, which you may have of this communication.

From: Edmonds, Michael
Sent: Thursday, September 10, 2015 12:29 PM
To: Tinsley, Harry; Jenkins, Aubrey
Cc: Wright, Mark; Helms, James
Subject: Please reconsider use of personal time
Importance: High

Dears sirs, as a point of clarification and to give as much situational awareness for any executive discussions outside of my presence, I would like to detail the specific admittances I am seeking. I realize I have approached both of you for multiple approvals and/or letters of reference, so I feel it beneficial to outline these to preclude any confusion.

- I am currently awaited an interview as the process to be admitted into the South Carolina Firefighter's Association Leadership Institute. Chief Tinsley provided a letter with the approval of Chief Jenkins last week endorsing my pursuit of this honor. Nothing else is needed from my leadership concerning this matter.
- I am currently seeking the Chief Fire Officer Certification through the Center For Public Safety Excellence (CPSE). CPSE provides the only accreditation program for fire service organizations in the world and offers nationally-recognized designations for fire and emergency services officers. The link [here](#) can provide more clarity if needed. This process is awaiting the letter of reference from my immediate supervisor, of which I solicited last week. The will be a certification based on my qualifications, review of references, an interview process, and submitted research material. To my knowledge, this certification or selection process will not induce needed attendance or other duties that may impact my ability to perform my duties.
- I am assembling my request to be considered as a candidate for the National Fire Academy's Executive Fire Officer Program (EFO). This program can be sourced [here](#) if further research is sought. This process is awaiting the endorsement letter and application signing of Chief Jenkins. Additionally, as each of you may know, this endeavor will have an impact on the next four years of the career. During the process, I will be asked to attend 10 days of classroom activities at the National Fire Academy each year. When discussing this with Chief Jenkins during the request for the aforementioned letter, I was told that "you will have to use your own time because it is not required". This is the one point that I wish to be reconsidered.

Each year, we as department pay thousands of dollars to allow our members to attend conferences that are "not required". This allows for our membership to network with other players in our industry as well as attend short educational opportunities that help them better themselves and hopefully help them further improve our department. I am wanting to attend a school that will better prepare me for my job and hopefully assist me in improving the department I help lead. In the cases of our members attending conferences, it costs us fuel, lodging, and meals. In the case of the EFO program, the lodging and attendance fees are free. The meals would be less than \$320 and the fuel would be minimal. But there is the time needed. In the cases of the fire conferences, we back fill for the attendees in most cases. In cases where executive members attend conferences, there is no real need to back fill. The member is able to work remotely via electronics and others can assist in covering the duties. In speaking to Division Chief Mark Wright, he completed one year of the program, but due to this mandate of "using your own time"; he was forced to be removed from the program. This not only was a negative impact to his career, but it also sheds a poor light on our department as well...all due to no fault of his own.

In addition to the consistency and fairness component of my rebuttal, I ask each to consider this; what about our succession plan for the future? We work daily to develop plans to prepare our younger members to be ready for the next level. But we do nothing to prepare for the time when we have to be replaced. We are provided an avenue for someone at the National level who has executive experience to teach our potential replacements what is needed for the future, yet we are hindering them from this ability to self-improve?

My proposal is this; we allow Division Chiefs and above, who are accepted into the program to attend using "approved class time" and not make them use their personal time. If they fail to meet the attendance requirements of the class while on "class time", we utilize the policy in place to pursue further disciplinary action. These positions can be covered and/or managed remotely as we do now with conference attendance. The selection process is so stringent that there will not be a mass influx of attendees to manage. And it prepares our younger members for the next level.

I humbly acknowledge the obvious "self-promotion" agenda this email has. My proposal will indeed benefit me. But I also feel it will benefit our rising leaders and the department as whole if pursued. Therefore I ask this; please reconsider the directive of making an EFO candidate use their own time. I ask this on the grounds of being fair and consistent with our historical practices. I ask this with the belief the it will help move our department into the next phase of leadership development, and I ask this on the grounds that, if managed properly, will not have any negative affect on the department itself. Additionally, if denied, *this will not deter me from my aspirations*. I have discussed this with my family and with their support, I will use my next four years of vacation time to successfully complete this course. But, I do feel that this denial may deter others we hope to replace us from reaching this exemplary achievement.

In closing, as I have always done; I will develop any and all policies to support my solution and will work tirelessly to ensure the success of the endeavor if approved.

I am always available for further consultation if needed.

Thank you both for the opportunity.



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Plaintiff's Exhibit 6
Email of March 25, 2016

Edmonds, Michael

From: Wilson, Teresa B
Sent: Friday, March 25, 2016 9:37 AM
To: Edmonds, Michael
Subject: RE: Confidential

Chief Edmonds,

I truly value your insight, perspective and willingness to be open with your concerns during this process. I take it very seriously and will do all I can to maintain the integrity and confidentiality of the protocol we have established. I look forward to talking with you soon. Try not to worry. Easter blessings to you and your family,

Teresa Wilson

Sent from my Verizon Wireless 4G LTE smartphone

----- Original message -----

From: "Edmonds, Michael" <cfmedmonds@columbiasc.net>
Date: 3/24/2016 5:09 PM (GMT-05:00)
To: "Wilson, Teresa B" <tbwilson@columbiasc.net>
Subject: Confidential

Madam City Manager, this afternoon I met with Ms. Liz Stewart; the appointed interviewer for the ongoing Leadership/management interviews. I welcome the opportunity to speak openly with her and additionally welcome any future opportunities to move this department forward in the right direction. Concerning the recent events that I am knowledgeable of, there are resounding concerns I have that have also obviously initiated these interviews with Ms. Stewart. The City of Columbia Ethics policy states that "I have the right and responsibility to report any activity that appears to be improper". With the timely meeting today, I revealed some *facts* that I believe to be improper. As is detailed by policy, every potential malfeasance I tabled today has been addressed with the Division head and the Department head along with my solution to each. I am prepared to meet with anyone at an executive level to elaborate if need be, but I feel that with the meeting this morning, I fulfilled my obligation as detailed by City policy.

Madam Manager; approximately two years ago, you asked me on two occasions, "I need you to support your Chief". I responded the first time; "yes ma 'me...and you leaned in and said it again. To which, I vehemently said, "yes ma 'me". To date, I feel I have done just that to a level I can be proud of. I will not bore you with specifying my efforts since that short conversation, but I have done everything that I can to support Chief Jenkins by making him, the department and the City look good, perform admirably as well as conduct myself appropriately as the Assistant Chief of Administration for The Columbia Fire Department. But as I sit here concerned for my present and future, I cannot continue to "support" a leader that is conducting himself in a way I cannot endorse.

Lastly, as I stated; I am very scared frankly for the ramifications that could take place following my recent actions. Chief Jenkins is a very influential person in this City and not supporting him can be detrimental. As I told Ms. Stewart; I will attest at the executive level to what I shared today, but only to a select few. I was open, honest, and showed all the documentation to support my assertions. We took a little over the 30 minute time allotment and Chief Michael Cothran was after me. Chief George Adams was in the parking lot awaiting his interview after Chief Cothran. Chief Adams and I had small talk, but I did not elaborate as to what I said. After Chief Cothran's interview, I met him for lunch and I can only assume that Chief Adams conducted his interview at that time. At 1:30, I had a meeting with Chief Adams at his office concerning another matter and at the beginning of that meeting, he said; "she said the guy before me had a lot to say". I laughed and said "Chief Cothran"? He replied; "no, she said you...said you had a lot to say...it was good information, but a lot of it". Again, I laughed it off but considering that I know Chief Adams and Chief Jenkins are very close, this just adds to my trepidation. Again, I stand by all that I have reported. But to maintain integrity and if you feel appropriate, please ask Ms. Stewart to not allude to any parts of other interviews until such time you deem acceptable, ambiguous or otherwise.

Ms. Wilson, I have always taught my children, taught those I lead, and conducted myself in this way; when there is no knowledge, skill, ability, experience, or any other resource to turn to for the answer to "what to do", always do what is right. I am not a Saint, but I do have a moral compass that knows right from wrong. That is what led me to the strategy I committed to today. Telling the truth and following the policies applicable are *what is right*, no matter how uncomfortable that makes me or how detrimental that outcome is.

In closing, please accept my deepest apologies for the discomfort and quandary I have put you in. I do not do so without knowing this must be done.

Thank you for the opportunity,



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Plaintiff's Exhibit 8
Email of June 2, 2016

Edmonds, Michael

From: Edmonds, Michael
Sent: Thursday, June 02, 2016 4:42 PM
To: Baker, Allison
Subject: Documentation as requested
Attachments: Request for class time; Notes on meetings; RE: Please reconsider use of personal time; Lunch or coffee tomorrow?

Sensitivity: Confidential

Attached are the emails as requested.

The one titled "Email about requesting class time" was following the verbal requests I made of Chief Jenkins. After a few weeks of no response, I asked Ms. Colleen Foster to remind him that I needed to know if I had to use permissive leave. That afternoon, (unknown date) she came to me and said my request was denied. As time passed; a month or so I believe, I felt the need to send this email. You will see how it was received. Chief Jenkins then came into my office immediately after responding and said "we need to start communicating better". I replied that "chief, I have tried to but you haven't given me an answer and you even had your assist deny me". I felt this needed to be done. He said we need to "go to lunch next week and discuss it". I thanked him and said ok. The following week, we did not have that lunch date. Since that time, I have asked him to lunch on multiple occasions (once by email attached) prior to the next email being sent but all were turned down or not responded to in the case of the email.

The email titled "request for class time" was the most recent one and has not yet been replied to. I have interpreted the request as denied.

The email titled "notes on meetings" was following a series of meetings in 2013 where we ran a "gauntlet" of three days of meetings where we were abused and downright disrespected openly by staff to say the least. If I recall; this rotation of "meetings" was following a "social media uprising" about us (Fire 1-4) being hired back. It is the first time I asserted a version of the meeting strategy we discussed today where we all went and met individually and then discussed the findings later. I have brought it up in at least two other executive staff meetings, but I am not sure what days they were and I did not keep the agendas. I can further research if needed.

Lastly, thank you for the opportunity to discuss these matters. I will work towards a solution in any way possible. If change is needed in me, you have my word I will indeed change for the good of the Department and the City of Columbia.

Professionally,

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Plaintiff's Exhibit 11
Blog of June 19, 2017

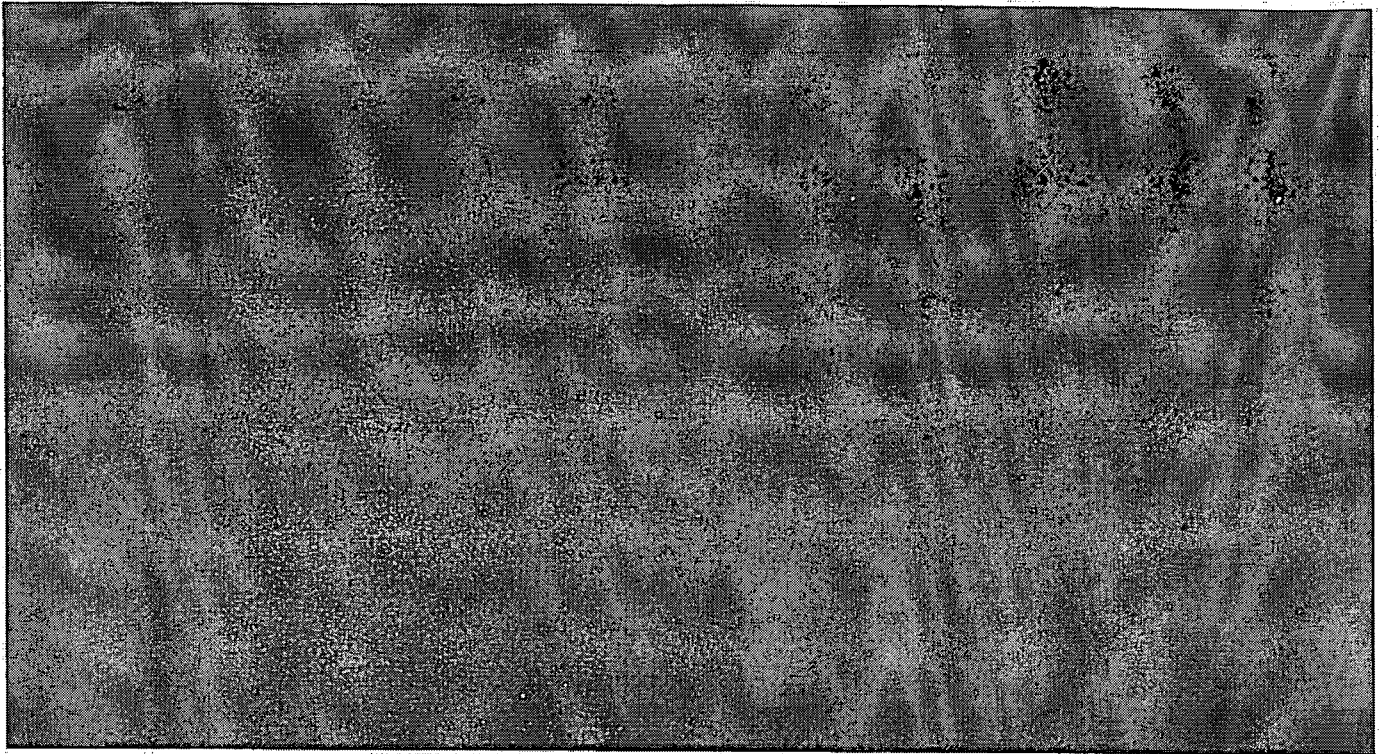
1/16/2018

Whistleblower: Mass Resignations, Crumbling Facilities, Fraudulent Reporting Tarnish Fire Department

Whistleblower: Mass Resignations, Crumbling Facilities, Fraudulent Reporting Tarnish Fire Department

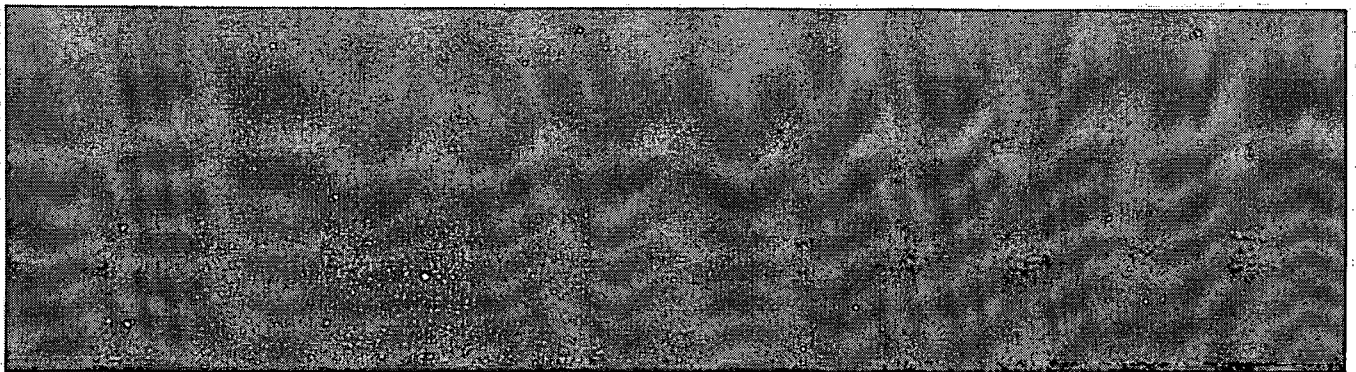
In LOCAL GOV. ON 18/06/17





QUESTIONABLE ETHICS

It's one thing when an individual makes a potentially unethical decision, such as a chief with purchasing authority allegedly buying some \$60,000 worth of new firefighting gloves that were not part of a rigorous internal test of six different brands to choose the ones best suited for the department. That situation, sources tell Quorum, is the subject of an open internal investigation.



Plaintiff's Exhibit 12

Glove Report

Columbia Fire Department



Case Summary and Conclusion



Columbia Fire Department

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OFFICE OF THE FIRE CHIEF
INTERNAL AFFAIRS

ADMINISTRATIVE INVESTIGATIVE REPORT CONCLUSION AND SUMMARY

THE INFORMATION CONTAINED WITHIN THIS FILE IS CONSIDERED CONFIDENTIAL AND VIEWABLE ONLY BY THOSE PERSONS AUTHORIZED BY THE FIRE CHIEF

Employee: AFC Michael Edmonds	Internal Affairs File Number: C-17-04
Employee Number: 8499	Assignment: Asst. Chief Administration
Investigated By: Inv. Matthew Jenkins	Supervisor: Chief Jenkins
Date Opened: 05/11/17	Date Completed: 05/30/17
Date of Hire: 01/22/13 (7/13/87 original)	

Columbia Fire Department Internal Investigative results are reviewed by the Office of the Fire Chief. Subsequently, a disposition will be rendered that is consistent with the conclusion of the investigation and is indicative of the following:

Sustained (The allegation is supported by sufficient evidence to indicate that the allegation is true)

Not Sustained (There is insufficient evidence to prove or disprove the allegation)

Unfounded (The allegation is false or there is insufficient evidence to support the allegation)

Exonerated (The allegation occurred but was lawful and proper)

Allegation(s):

Allegation #1

The following violation could be considered, if the allegation (s) were found to be sustained:

Violation of the City of Columbia Ethics Policy, also, SOG 100.24.1.B. and SOG 100.18.5.A.12 Abuse of Position

Reference City of Columbia Employee Handbook (Appendix C) and Columbia Fire Department Standard Operating Guidelines

Refers to the allegation of receiving some sort of personal gain when moving forward with the purchase of the "Super Glove."

Discipline Guidelines for violation of SOG 100.18.5.AAA. 12 under the Columbia Fire Departments Disciplinary Action Plan are as follows: (None found for City of Columbia Ethics Policy or SOG 100.24.1B.

1st Offense: Written Warning to Discharge

2nd Offense: Suspension to Discharge

3rd Offense: Discharge

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Columbia Fire Department

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OFFICE OF THE FIRE CHIEF INTERNAL AFFAIRS

Case Summary/Timeline/Conclusion:

Summary:

I was asked to do an administrative investigation into why Asst. Chief Michael Edmonds made a large and substantial purchase for gloves that were not a part of a long glove trial being performed. There were also concerns raised as to the relationship between Edmonds and the vendor, Seth Newton, who received the contract for the purchase of the gloves as a sole source provider.

On 5/11/17 I was advised of the complaint on Asst. Chief Michael Edmonds. I was contacted by Asst. Chief Adams on 5/12/17 stating that Chief Edmonds wanted to come in for his interview. I interviewed Chief Edmonds. During his interview he gave his reasoning for the purchase of the "Super Glove" and answered questions as it related to that. (See Statements and Recordings)

I then went on to interview Capt. Dupree, Helen Bryant, BC Williams, AFC Helms, BC Kip, DVC Jacobs, BC N. Martin and DVC Carricato as they were all named in some way as it relates to the investigation. (See Statements and Recordings)

This investigation found that there was some form of informal field trial done on four or five gloves in either 2011 or 2012. During that field trial, the "Super Glove" was the clear winner. There are no reviewable results of this study as Chief Edmonds was going off of "word of mouth" that the "Super Glove" was the winner. Purchase of the gloves was put off for various reasons until this year. During this time, a "2nd glove study" was initiated by the Training Division. There are some discrepancies as to who authorized the glove study to be done by training however it appeared in an email (see tab Tinsley) that then Deputy Chief Tinsley was at least aware of the glove trial and had sent it to Chief Edmonds to review. The 2nd glove trial was in progress at that time. Shortly after Deputy Chief Tinsley transferred to his new position the glove trial was ordered to be halted by Chief Edmonds. However, at that time, Chief Edmonds appeared to be trying to get the results of the 2nd glove trial; but Training Chief Martin did not want to give results or approval for anything that was not completed. Training Chief Martin went on to support the decisions of the Division Chiefs and others from the previous trial stating that if those were the results and that was what the department wanted then he supported it.

This investigation found that the decision was made by Chief Edmonds to purchase the "Super Glove" from the previous field trial. This investigation also determined that the decision was made to go ahead and purchase the 500+ gloves without getting proper sizes for the department.

Everyone I spoke to advised they had heard rumors that "Chief Edmonds and Seth Newton were camping buddies," or "There is a picture of Chief Edmonds and Seth Newton at a family outing/vacation," or that "Chief Edmonds must be getting a kickback since he purchased gloves from

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a vendor who wasn't even a part of the glove trial." None of these allegations were substantiated and no one could/would tell me who they heard it from and would just say numerous people. When I attempted to get names or anything of the sort they would not/could not remember or say they just heard it around.

I spoke to Robert Joyner (retired) and he said that he remembers the initial glove trial and yes the "Super Glove" which was purchased was the choice at that time. He echoed some of the issues he had with the purchase was that the entire department was not sized and they simply purchased random sizes. He believed that in doing so you may not be able to outfit the entire department and that it was a waste of time and money. He stated he did not believe Chief Edmonds was involved in any impropriety and stated that it wasn't possible for him to be.

This investigation found that after reaching out to Tonya Payne in purchasing that she is no longer with the City of Columbia. She apparently left May 12, 2017. I reached out to her supervisor Lawana Roberts-Lee to see if they could shed any light on why Newton's was selected as a sole source. I have received no response as of this date and time.

Timeline:

- On 5/11/17 I was advised of a complaint involving Asst. Chief Edmonds and the fire gloves recently purchased by Chief Adams.
- On 5/12/17 Chief Adams and I interviewed Chief Edmonds.
- On 5/15/17 I interviewed Capt. Dupree who was in charge of the R & D for the gloves. (Note, the recorder for my IPAD did not work so the interview was not recorded)
- On 5/16/17 I interviewed Helen Bryant.
- On 5/17/17 I interviewed BC Alpod Williams.
- On 5/24/17 I interviewed AFC Helms.
- On 5/25/17 I interviewed BC Kip.
- On 5/25/17 I interviewed DVC Jacobs.
- On 5/26/17 I interviewed BC N. Martin.
- On 5/26/17 I interviewed DVC Carricato.

1800 Laurel St. | Columbia, South Carolina 29201
Phone: 803-545-3700 Fax: 803-733-8311



Columbia Fire Department

www.columbiasc.net/fire

OFFICE OF THE FIRE CHIEF INTERNAL AFFAIRS

Conclusion:

It is the findings of this investigation that there is not sufficient evidence to indicate that the allegations are true. The investigation did reveal that there may be some issues/concerns with the decision making/procurement process. Questions were raised that the gloves purchased were part of a field test that was conducted in either 2011 or 2012. Glove manufacturing standards, NFPA standards, OSHA regulations and the science behind it has changed dramatically in that time. The concern is that those gloves may have been the best on the market in 2011 or 2012, but are they now in 2017 more than 5 years later. Another issue that was brought up was that the department was not sized for the gloves. The gloves purchased have over 15 different sizes to accommodate almost any hand size. The concern is that most of the gloves purchased will not be able to be used due to the fact that random sizes were ordered as opposed to having them sized prior too.

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Plaintiff's Exhibit 14
Email of July 6, 2017

Bennett-Williams, Emma

From: Benjamin, Pamela R
Sent: Wednesday, January 09, 2019 11:41 AM
To: Bennett-Williams, Emma
Subject: FW: Please Review

From: Benjamin, Pamela R
Sent: Friday, October 12, 2018 12:09 PM
To: Bennett-Williams, Emma <Emma.BennettWilliams@columbiasc.gov>
Subject: FW: Please Review



From: Baker, Allison
Sent: Thursday, July 06, 2017 8:33 PM
To: Jenkins, Aubrey
Cc: Benjamin, Pamela R; Wilson, Teresa B
Subject: Re: Please Review

Chief,

I will defer to Ms. Benjamin on whether this letter is most appropriate. I would like to review the options provided in the City of Columbia employee handbook before I endorse what you are proposing.

While I am not an attorney, it has been my experience and understanding that the termination of an "at will" employee requires little or no explanation. In other words, an employee can be dismissed by an employer without having to establish "just cause" for termination and without warning.

There is much evidence to support the ineffectiveness of Chief Edmonds, however I would prefer that his separation be kept as simple as possible from our perspective.

S. Allison Baker

Sent from my iPad

On Jul 6, 2017, at 7:18 PM, Jenkins, Aubrey <cfdajenkins@columbiasc.net> wrote:

Please read, I did not want to put much into this letter. I will send this to him by certified mail tomorrow. Let me know if this is okay.

Thanks,



Aubrey D. Jenkins, Fire Chief
Fire Department

1800 Laurel Street, Columbia, SC 29201

Phone: 803-545-3710

Fax: 803-733-8311

ColumbiaSC.net

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If you have received this communication in error or are not sure whether it is privileged, please immediately notify me by return email and destroy any copies, electronic, paper or otherwise, which you may have of this communication.

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<2017_07_06_19_07_10.pdf>

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Michael Edmonds,

Plaintiff,

vs.

City of Columbia,

Defendant.

) IN THE COURT OF COMMOND PLEAS

) FIFTH JUDICIAL CIRCUIT

)

)

)

)

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)

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)

C/A No.: 2017-CA-40-6172

VERDICT FORM

NEGLIGENCE

1. Do you find that the Plaintiff has proven by a preponderance of the evidence that the Defendant failed to use reasonable care in its supervision of Liz Stewart & Associates when ensuring the confidentiality of the Fire Department Survey?

_____ Yes

_____ No

If you answer yes, GO TO QUESTION 2

If you answer no, STOP AND DELIBERATE NO FURTHER

2. Do you find that the Plaintiff has proven by a preponderance of the evidence that the Defendant's failure to use reasonable care was the proximate cause of the Plaintiff's injuries?

_____ Yes

_____ No

If you answer yes, GO TO QUESTION 3

If you answer no, STOP AND DELIBERATE NO FURTHER

3. Please state the total amount of damages, if any, sustained by the Plaintiff as a result of Defendant's failure to use reasonable care as described above.

\$ _____

FOREPERSON

DATE

WHEN YOU HAVE COMPLETED THE QUESTIONNAIRE, NOTIFY THE BAILIFF.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Michael Edmonds,

Plaintiff,

vs.

City of Columbia,

Defendant.

) IN THE COURT OF COMMOND PLEAS
) FIFTH JUDICIAL CIRCUIT
)

C/A No.: 2017-CA-40-6172

VERDICT FORM

DEFAMATION

1. Do you find that Plaintiff has proven by a preponderance of the evidence that the Defendant has published a defamatory statement about Plaintiff that was false?

 Yes
 No

If you answer yes, GO TO QUESTION 2

If you answer no, STOP AND DELIBERATE NO FURTHER.

2. Do you find that Plaintiff has proven by a preponderance of the evidence that the Defendant acted with ill will toward the Plaintiff or acted recklessly or wantonly, i.e., with conscious indifference of the Plaintiff's rights in publishing such statement?

 Yes
 No

If you answer yes, GO TO QUESTION 3

If you answer no, STOP AND DELIBERATE NO FURTHER.

3. Do you find that the statement published by the Defendant was conditionally (or qualifiedly) privileged?

 Yes
 No

If you answer yes, STOP AND DELIBERATE NO FURTHER.

If you answer no, GO TO QUESTION 4

4. Please state the total amount of actual damages, if any, sustained by the Plaintiff as a result of Defendant's statement. Such damages, if any, may only include injury to Plaintiff's reputation and standing in the community.

\$ _____

FOREPERSON

DATE

WHEN YOU HAVE COMPLETED THE QUESTIONNAIRE, NOTIFY THE BAILIFF.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Daniel Dewitt Hall, Circuit Court Judge

Case No. 2017-CP-40-06172
Appellate Case No. 2019-001047

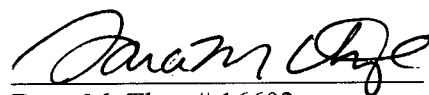
Michael Edmonds,..... Respondent,

v.

City of Columbia,..... Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all material
proposed to be included by any of the parties and not any other material.



Dana M. Thye # 16602
OFFICE OF THE CITY ATTORNEY
P.O. Box 667
Columbia, SC 29202
(803) 737-4242
dana.thye@columbiasc.gov

November 21, 2019

RECEIVED

DEC 04 2019

SC Court of Appeals

Attorney for Appellant